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UNITED STATES

COURT OF APPEALS

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On October 8, 1952 INDICTMENT was filed in open Court in the words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION.

8162 M Cr.

UNITED STATES OF AMERICA,

versus

ALBERTO L. ARANGO; JOA O. ANTONIO FARES alias Joa Fares alias Joe Fares; CARLOS B. FERNANDEZ; GABRIEL GOMEZ; MARIO GOMEZ; SAMUEL GOMEZ; IRMA HENRY GOMEZ alias Irma Henry; MARIO MARTINEZ; RAUL I. MARTINEZ; EUGENIO G. PONCE; HUMBERTO RECIO; JOHN SESE and DOMINGO ZABALGOGEZCOA alias Domingo Zabal.

Count One.

The Grand Jury charges:

On or about the 1st day of July, 1948, and continuously thereafter to and including the 1st day of April, 1951, Alberto L. Arango, Joa O. Antonio Fares alias Joa Fares alias Joe Fares, Carlos B. Fernandez, Gabriel Gomez, Mario Gomez, Samuel Gomez, Irma Henry Gomez alias Irma Henry, Mario Martinez, Raul I. Martinez, Eugenio G. Ponce, Humberto Recio, John Sese and Domingo Zabalgogezcoa alias Domingo Zabal, hereinafter called defendants, and divers other

persons to the grand jurors unknown, at and in the Southern District of Florida, to-wit, in Dade County, Florida, at and in the vicinity of Miami and Miami Beach, Florida, unlawfully did enter into an agreement, combination and conspiracy to defraud the United States or an agency thereof, by obtaining and aiding to obtain the payment and allowance of certain false, fictitious and fraudulent claims, in this, to-wit:

The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", is a corporation with its principal place of business at or in the vicinity of New York City, New York. Said corporation is in the business of conducting schools or places of instruction in various parts of the United States wherein customers or students receive instruction in various languages, such as Spanish, Portuguese and the like. Some time before the formation of the conspiracy herein described, said Berlitz established a branch school or place of instruction in the City of Miami, Dade County, Florida, said branch school, during the time involved in this conspiracy, occupying quarters in the DuPont Building, Miami, Florida. Defendant Alberto L. Arango was manager of said branch school. The other defendants were employees of said branch school or teachers in said branch school or were held out to various proposed trainees and the United States Veterans Administration to be such teachers or employees, Said conspiracy was to be accomplished by attempting to defraud the United States through the use of the facilities and functions of the United States Veterans Administration, an agency of the United States, in connection with the exercise of its governmental functions controlling and administering the

Servicemen's Readjustment Act of 1944, which is also known as Public Law 346 of the 78th Congress, which act was administered and to be administered through various executive orders, directives and amendments thereto which were authorized by the provisions of said Act. Berlitz was operating under said Act under and through a contract with said Veterans Administration by the terms of which it would receive compensation and payment on a per hour basis for hours of instruction given by it to trainees, and was to be reimbursed for supplies furnished by it to said trainees.

It was a part of said conspiracy that defendants or some of them, aided and abetted by other defendants, would urge, invite and induce various persons who were qualified for training benefits under said Public Law 346, to enroll with Berlitz as students or trainees, and would defraud the United States and attempt to do so by presenting and causing to be presented to the United States Veterans Administration, Miami, Florida, for approval and payment, certain claims in the form of invoices against the United States Government, acting through said United States Veterans Administration, Miami, Florida, for moneys claimed to be due said Berlitz under said Public Law 346 as tuition fees under the contract aforesaid, for instruction furnished various trainees and for books and supplies claimed to have been furnished said trainees, said defendant Arango and certain other defendants knowing such invoices and claims to be false, fraudulent and fictitious. It was a part of said conspiracy that said invoices and claims would be false and fraudulent in that said invoices and claims would be filed and caused to be filed with said Vet-

erans Administration by said defendants in the name of said Berlitz, and thereby the said defendants would secure to be paid, and attempt to secure to be paid to said Berlitz, large sums of money under claim that a large number of hours of instruction as stated in said invoices and claims had been given to said various trainees or students and a large amount of supplies had been furnished to said various trainees or students for which Berlitz was entitled to be paid under said contract, and that the number of hours of instruction, and the amounts of supplies, claimed in said invoices and claims to have been given and furnished would be greatly in excess of the true number of hours of instruction actually given and the true amount of supplies furnished for which said Berlitz was justly and lawfully entitled to be paid. That by the means aforesaid the said Berlitz would obtain and receive, and attempt to obtain and receive, from the United States payment and allowance of said false, fictitious and fraudulent claims, thus defrauding the United States Government.

(Title 18 U S C Section 286.)

Count Two.

The Grand Jury further charges:

On or about the 1st day of July, 1948, and continuously thereafter to and including the 1st day of April, 1951, Alberto L. Arango, Joa O. Antonio Fares alias Joa Fares alias Joe Fares, Carlos B. Fernandez, Gabriel Gomez, Mario Gomez, Samuel Gomez, Irma Henry Gomez alias Irma Henry, Mario Martinez, Raul I. Martinez, Eugenio G. Ponce, Humberto Recio,

John Sese and Domingo Zabalgogezcoa alias Domingo Zabal, hereinafter called defendants, at and in the vicinity of Miami and Miami Beach, Florida, unlawfully and knowingly did combine, conspire, confederate and agree together and with divers other persons to the grand jurors unknown to defraud the United States and to commit divers offenses against the United States, to-wit: to violate Title 18, Section 287 of the United States Code, Title 18, Section 1001 of the United States Code, and Title 18, Section 2 of the United States Code that is to say:

The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", is a corporation with its principal place of business at or in the vicinity of New York City, New York. Said corporation is in the business of conducting schools or places of instruction in various parts of the United States wherein customers or students receive instruction in various languages such as Spanish, Portuguese and the like. Some time before the formation of the conspiracy herein described, said Berlitz established a branch school or Place of instruction in the City of Miami, Dade County, Florida, said branch school, during the time involved in this conspiracy, occupying quarters in the DuPont Building, Miami, Florida. Defendant Alberto L. Arango was manager of said branch school. The other defendants were employees of said branch school or teachers in said branch school or were held out to various proposed trainees and the United States Veterans Administration to be such teachers or employees.

It was a part of said conspiracy that the defendants would violate Title 18, Section 287 of the United States

Code, in that they would make, and present, and cause to be made and presented to a person or officer in the civil or military service of the United States, various claims upon and against the United States, or an agency or department thereof, knowing such claims to be false, fictitious and fraudulent in the manner described in Count One of this indictment, the facts set forth in said count one being hereby incorporated into and made a part of this count of this indictment to the same extent as if the same had been herein fully set forth, and so far as necessary to explain the nature of said false claims.

It was further a part of said conspiracy that said defendants, or some of them would violate Title 18, Section 1001 of the United States Code in that, in the manner hereinafter stated, in a matter within the jurisdiction of an agency and department of the United States, the defendants would wilfully falsify and cover up by trick, scheme or device, a material fact, to-wit, would wilfully falsify and cover up by trick, scheme or device the number of hours of instruction given to various trainees by Berlitz and the amount of supplies furnished by Berlitz to trainees, for which it was entitled to be paid under the terms of a contract with the United States Veterans Administration, and that the defendants would make and use a false writing or document, to-wit, false invoices, knowing the said invoices to contain false, fictitious and fraudulent statements with respect to the number of hours of instruction given to various trainees and the amount of supplies furnished the various trainees; and that the defendants would defraud and attempt to defraud the United States in the manner hereinafter stated.

Said conspiracy to defraud was to be accomplished by attempting to defraud the United States through the use of the facilities and functions of the United States Veterans Administration, an agency of the United States, in connection with the exercise of its governmental functions controlling and administering the Servicemen's Readjustment Act of 1944, which is also known as Public Law 346 of the 78th Congress, which act was administered and to be administered through various executive orders, directives and amendments thereto which were authorized by the provisions of said Act. Berlitz was operating under said Act under and through contract with the United States Veterans Administration by the terms of which it would receive compensation and payment on a per hour basis for hours of instruction given trainees and was to be reimbursed for supplies furnished by it to said trainees.

It was a part of said conspiracy that defendants or some of them, aided and abetted by other defendants, would defraud the United States and attempt to do so by presenting and causing to be presented to the United States Veterans Administration, Miami, Florida, for approval and payment, certain invoices and claims against the United States Government acting through said United States Veterans Administration, Miami, Florida, for moneys claimed to be due said Berlitz under said Public Law 346 as tuition fees under the contract aforesaid, for instruction furnished various trainees and for books and supplies claimed to have been furnished said trainees, said defendant Arango and other defendants, knowing such invoices and claims to be false, fraudulent and fictitious. It was a part of said conspiracy that said invoices and

claims would be false and fraudulent in that said invoices and claims would be filed and caused to be filed with said Veterans Administration by said defendants in the name of said Berlitz, and thereby the said defendants would secure to be paid, and attempt to secure to be paid to said Berlitz, large sums of money under claim that a large number of hours of instruction had been given to said various trainees or students and a large amount of supplies had been furnished to said various trainees or students for which Berlitz was entitled to be paid under said contract, and that the number of hours of instruction, and the amounts of supplies, claimed in said invoices and claims to have been given and furnished, would be greatly in excess of the true number of hours of instruction actually given and the true amount of supplies furnished for which said Berlitz was justly and lawfully entitled to be paid. That by the means aforesaid, the said Berlitz would obtain and receive and attempt to obtain and receive from the United States large sums of money to which it was not and would not be entitled, thus and thereby defrauding the United States. For all other details of said fraud, the facts alleged in Count One of this indictment are alleged and made a part of this count.

That after the formation of said conspiracy and while the same was in full force and effect, to effect the objects of said conspiracy, the said defendants, or some one or more of them, at the several times and places as hereinafter stated, did do and commit the following overt acts, to-wit:

Overt Acts.

1. That on, to-wit, July 11, 1949, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifteen hours of instruction had been given to E. B. Sherman, and that there was due to said Berlitz therefor the sum of $52.50.

2. That on, to-wit, September 5, 1949, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to E. B. Sherman, and that there was due to said Berlitz therefor the sum of $175.00.

3. That on, to-wit, October 5, 1949, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to E. B. Sherman, and that there was due to said Berlitz therefor the sum of $175.00.

4. That on, to-wit, December 6, 1949, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to George W. Harris,

and that there was due to said Berlitz therefor the sum of $175.00.

5. That on, to-wit, May 30, 1950, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to Lewis Ernest Slater, and that there was due to said Berlitz therefor the sum of $175.00.

6. That on, to-wit, August 7, 1950, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to Lewis Ernest Slater, and that there was due to said Berlitz therefor the sum of $175.00.

7. That on, to-wit, October 24, 1950, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that fifty hours of instruction had been given to Robert E. Cassada, and that there was due to said Berlitz therefor the sum of $175.00.

8. That on, to-wit, January 24, 1951, in Dade County, Florida, the defendant Alberto L. Arango did submit and cause to be submitted to the United States Veterans Administration, Miami, Florida, for approval and payment, an invoice claiming that ninety-six

hours of instruction had been given to Frank A. Cinicola, and that there was due to said Berlitz therefor the sum of $336.00.

9. During the period of time herein stated, while said conspiracy was still in full force and effect, in Dade County, Florida, on numerous other days and dates, the exact number being to this grand jury unknown, the said Alberto L. Arango, aided and abetted by the other defendants, or some of them, did submit to said United States Veterans Administration, Miami, Florida, for approval and payment, to-wit: 2500 other and additional invoices, which were similar to the invoices mentioned in overt acts one to eight, inclusive, but differed (a) as to date, (b) as to name of trainee, (c) as to number of hours of instruction claimed to have been given to said named trainee, and (d) as to the amount of payment claimed. The exact number of said additional invoices is to the grand jury unknown. The submitting of each of said additional invoices is charged as a separate and individual overt act. Said additional invoices are too numerous to mention, and the stating of same in detail would render this indictment unnecessarily lengthy and prolix.

10. That on, to-wit, October 1st, 1950, in Dade County, Florida, the defendant Alberto L. Arango did request and induce one Robert E. Cassada, a trainee for whose instruction invoices were submitted to the United States Veterans Administration for payment in the manner indicated in overt acts one to eight, inclusive, to sign, to-wit: fifty documents, commonly called attendance slips, each of which attendance slips falsely reflected that on a date stated therein said

Cassada had attended classes at Berlitz for the period of one hour, when, in fact, said Cassada had not so attended class.

11. That on, to-wit, September 1st, 1950, in Dade County, Florida, the defendant Alberto L. Arango did request and induce one Lewis Ernest Slater, a trainee for whose instruction invoices were submitted to the United States Veterans Administration for payment in the manner indicated in overt acts one to eight, inclusive, to sign, to-wit: thirty documents, commonly called attendance slips, each of which attendance slips falsely reflected that on a date stated therein said Slater had attended class at Berlitz for the period of one hour, when, in fact, said Slater had not so attended class.

12. That on, to-wit, September 1st, 1950, in Dade County, Florida, the defendant Alberto L. Arango did request and induce one Edwin Ransom Greenfield, a trainee for whose instruction invoices were submitted to the United States Veterans Administration for payment in the manner indicated in overt acts one to eight, inclusive, to sign, to-wit: twenty-five documents, commonly called attendance slips, each of which attendance slips falsely reflected that on a date stated therein said Greenfield had attended class at Berlitz for the period of one hour, when, in fact, said Greenfield had not so attended class.

13. That on, to-wit, July 1st, 1950, in Dade County, Florida, the defendant Alberto L. Arango did request and induce one Frank A. Cinicola, a trainee for whose instruction invoices were submitted to the United States Veterans Administration for payment in the

manner indicated in overt acts one to eight, inclusive, to sign, to-wit: one hundred documents, commonly called attendance slips, each of which attendance slips falsely reflected that on a date stated therein said Cinicola had attended class at Berlitz for the period of one hour, when, in fact, said Cinicola had not so attended class.

14. That on, to-wit, May 1st, 1950, in Dade County, Florida, the defendant Alberto L. Arango did request and induce one Howard Grady Bell, a trainee for whose instruction invoices were submitted to the United States Veterans Administration for payment in the manner indicated in overt acts one to eight, inclusive, to sign, to-wit: seventy documents, commonly called attendance slips, each of which attendance slips falsely reflected that on a date started therein said Bell had attended class at Berlitz for the period of one hour, when, in fact, said Bell had not so attended class.

15. During the period of time herein stated while said conspiracy was still in full force and effect in Dade County, Florida, on numerous days and dates, the exact number of documents being to the grand jurors unknown, and the exact dates of executing same being to the grand jurors unknown, the defendants and each of them did request and induce divers and sundry trainees for whose instruction invoices were at some time submitted to the United States Veterans Administration for approval and payment in the manner indicated in overt acts one to eight, inclusive, to sign, to-wit, 3,000 other and additional attendance slips, each of which said additional attendance slips falsely reflected that on a date stated

therein a trainee named therein had attended a class at Berlitz for a period of one hour, when, in fact, said trainee had not so attended class. Securing of said signatures of said trainees to each of said additional attendance slips is charged as a separate and individual overt act. Said additional overt acts are too numerous to mention. The stating of the same in detail would render this indictment unnecessarily lengthy and prolix.

16. While said conspiracy was in full force and effect, on numerous days and dates, the exact days and dates being to the grand jurors unknown, some one or more of the defendants or some unnamed conspirator or confederate whose name is to the grand jurors unknown did sign or cause to be signed, and cause to be filed or placed in the records of Berlitz numerous documents on each of which a name purporting to be the signature of a teacher who had given instruction to a specifically named trainee, on a specifically named date, had been signed, when as a matter of fact, the person whose name purported to be signed to said document as a teacher had not signed said document and had not on the date stated on said document given instruction to said named trainee, the name purporting to be the name of said teacher being forged, fictitious and fraudulent; that thereafter, an investigation of alleged irregularities in the operation of Berlitz of a kind reflected in the conspiracy hereinbefore set forth was under investigation by agents of the Federal Bureau of Investigation and said defendants or some one of them produced and caused to be produced to said agents of the said Federal Bureau of Investigation said false, fictitious and forged documents and records as being

true and correct records supporting invoices for hours of instruction which had been submitted to the United States Veterans Administration for approval and payment.

(Title 18, Section 371 USC.)

Count Three.

The Grand Jury further charges:

That on or about the 11th day of July 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Joa O. Antonio Fares alias Jo Fares alias Joe Fares, herein caled defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one E. B. Sherman, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 11th day of July, 1949, the said defendants presented and caused to be presented to the United

States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $52.50 as tuition or compensation for 15 hours of instruction theretofore claimed to have been given to said E. B. Sherman, because it was claimed that said Berlitz had given and caused to be given to said trainee 15 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 15 hours of instruction, and there was not due to said Berlitz therefor as much as $52.50.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Four.

The Grand Jury further charges:

That on or about the 5th day of September, 1949, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Joa O. Antonio Fares alias Joa Fares alias Joe Fares, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one E. B. Sherman, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 5th day of September, 1949, the said defendants, presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said E. B. Sherman because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the

defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Five.

The Grand Jury further charges:

That on or about the 5th day of October 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Joa O. Antonio Fares alias Joa Fares alias Joe Fares herein called defendants, did make and present, and cause to be made and presented to a person, in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Lan-

guages of America, Inc., which will hereinafter be referred to by the name "Berlitz" for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee to-wit: one E. B. Sherman, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 5th day of October, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment on invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said E. B. Sherman, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours, of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction and there was not due to said Berlitz therefor as much as $350.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agen-

cy thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Six.

The Grand Jury further charges:

That on or about the 6th day of December 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one George W. Harris, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 6th day of December, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and

payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Geroge W. Harris, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Seven.

The Grand Jury further charges:

That on or about the 30th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto I. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a

person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown,, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Lewis Ernest Slater, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 30th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Lewis Ernest Slater, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction and there was not due to said Berlitz therefor as much as $175.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Eight.

The Grand Jury further charges:

That on or about the 7th day of August 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Lewis Ernest Slater, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 7th day of August 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Lewis Ernest Slater, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

And so the Grand Jury charges that in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Nine.

The Grand Jury further charges:

That on or about the 24th day of October 1950, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Robert E. Cassada, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Robert E. Cassada because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction pursuant to the provisions of The Servicemen's Reajustment Act of 1944 also known as Public Law 346 of the 78th Congress and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to

said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, ection 287, United tates Code.)

Count Ten.

The Grand Jury further charges:

That on or about the 24th day of January 1951, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown a claim upon and against the United States or an agency theerof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Lan-

guages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit: one Frank A. Cinicola, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of January, 1951, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $336.00 as tuition or compensation for 96 hours of instruction theretofore claimed to have been given to said Frank A. Cinicola, because it was claimed that said Berlitz had given and caused to be given to said trainee 96 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 96 hours of instruction, and there was not due to said Berlitz therefor as much as $336.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Eleven.

The Grand Jury further charges:

That on or about the 5th day of September 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Treva L. Main, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 5th day of September, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Treva L. Main, because it was claimed that said Berlitz had given

and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twelve.

The Grand Jury further charges:

That on or about the 12th day of December 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the

United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Stanley A. LaFantasie, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 12th day of December, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Stanley A. LaFantasie, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and

present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Nolle Prossed.

Count Thirteen.

The Grand Jury further charges:

That on or about the 24th day of January 1951, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Edwin R. Greenfield, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of January, 1951, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Edwin R. Greenfield, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Fourteen.

The Grand Jury further charges:

That on or about the 27th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul P. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Paul M. Baker, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 27th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Paul M. Baker, because it was claimed that said Berlitz had given

and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Fifteen.

The Grand Jury further charges:

That on or about the 29th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further de-

scription of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Walter Kalaba, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 29th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Walter Kalaba, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and pre-

sent, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Sixteen.

The Grand Jury further charges:

That on or about the 7th day of July 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango and Raul I. Martinez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Joseph Bruce, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 7th day of July, 1949, the said defendants presented and caused to be presented to the United

States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $147.00 as tuition or compensation for 42 hours of instruction theretofore claimed to have been given to said Joseph Bruce because it was claimed that said Berlitz had given and caused to be given to said trainee 42 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 42 hours of instruction, and there was not due to said Berlitz therefor as much as $147.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Seventeen.

The Grand Jury further charges:

That on or about the 30th day of October 1950, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Humberto Recio herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Simon Gottfried, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 30th day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Simon Gottfried, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to

said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmt of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Eighteen.

The Grand Jury further charges:

That on or about the 30th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Humberto Recio herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The

Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name of "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one David Galabow, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 30th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said David Galabow, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim

upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Nineteen.

The Grand Jury further charges:

That on or about the 24th day of October 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Humberto Recio herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Frank Pasqual, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval

and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Frank Pasqual, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty.

The Grand Jury further charges:

That on or about the 25th day of October 1950, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Joa O. Antonio Fares alias Joa Fares alias Joe Fares, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Joaquin G. Lewis, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 25th day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Joaquin G. Lewis, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the

defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmnt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-One.

The Grand Jury further charges:

That on or about the 24th day of January 1951, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Joa O. Antonio Fares alias Joa Fares alias Joe Fares, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United Stats Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the

United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Thomas E. Francis, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of January, 1951, the said defendants presented, and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Thomas E. Francis, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmnt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim

upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Two.

The Grand Jury further charges:

That on or about the 4th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez, and Joa O. Antonio Fares alias Joa Fares alias Joe Fares, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Adolfo A. Arradie, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 4th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and pay-

ment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Adolfo A. Arradie, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Three.

The Grand Jury further charges:

That on or about the 7th day of August 1950, at and in the County of Dade, State of Florida, in the South-

ern District of Florida, Alberto L. Arango, Raul I. Martinez and Mario Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit; to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Carl R. Bonkala, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 7th day of August, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Carl R. Bonkala, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defend-

ants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Four.

The Grand Jury further charges:

That on or about the 29th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Mario Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for com-

pensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Francis P. Edwards, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 29th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Francis P. Edwards, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim

upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Five.

The Grand Jury further charges:

That on or about the 22nd day of January 1951, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez, Gabriel Gomez and Samuel Gomez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Jimmie Blackstock, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 22nd day of January, 1951, the said defendants presented and caused to be presented to the United States Veterans Administration for approval

and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Jimmie Blackstock, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Six.

The Grand Jury further charges:

That on or about the 4th day of August 1950, at and in the County of Dade, State of Florida, in the South-

ern District of Florida, Alberto L. Arango, Raul I. Martinez and Gabriel Gomez herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Phillip Saunders, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 4th day of August, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00, as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Phillip Saunders, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the

defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Seven.

The Grand Jury further charges:

That on or about the 5th day of September 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Gabriel Gomez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for

compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one John Edward Schultz, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 5th day of September, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said John Edward Schultz, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Jdgmnt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim

upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Eight.

The Grand Jury further charges:

That on or about the 9th day of September 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Gabriel Gomez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tution or compensation for instruction claimed to have been given by Berltiz to a certain trainee, to-wit, one Arthur Porter, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 9th day of September, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein

it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Arthur Porter, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and thre was not due to said Berlitz therefor as much as $175.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Twenty-Nine.

The Grand Jury further charges:

That on or about the 5th day of October 1949, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Gabriel Gomez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Arthur Porter, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 5th day of October, 1949, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Arthur Porter, because it was claimed that said Berlitz had given, and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defend-

ants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty.

The Grand Jury further charges:

That on or about the 27th day of May 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Samuel Gomez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for

compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Charles F. Clark, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 27th day of May, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Charles F. Clark because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction pursuant to the provisions of The Servicemen's Readjustment Act of 1944 also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim

upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty-One.

The Grand Jury further charges:

That on or about the 30th day of October 1950, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Carlos B. Fernandez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name 'Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one George A. Simon, the defendants well knowing such claim to be false, ficitious and fraudulent in this:

On the 30th day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval

and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said George A. Simon, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction, and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendant did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty-Two.

The Grand Jury further charges:

That on or about the 23rd day of October 1950, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Mario Martinez, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one William J. Caccio, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 23rd day of October, 1950, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said William J. Caccio because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the

defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an gency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty-Three.

The Grand Jury further charges:

That on or about the 14th day of June 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Irma Henry Gomez alias Irma Henry, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States

Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Julio Calderon, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 14th day of June, 1949, the said defendants presented and caused to be presented to the United States Veterans Aministration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $175.00 as tuition or compensation for 50 hours of instruction theretofore claimed to have been given to said Julio Calderon, because it was claimed that said Berlitz had given and caused to be given to said trainee 50 hours of instruction pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 50 hours of instruction and there was not due to said Berlitz therefor as much as $175.00.

Nolle Prossed.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service

of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty-Four.

The Grand Jury further charges:

That on or about the 2nd day of July 1949, at and in the County of Dade, State of Florida, in the Southern District of Florida, Alberto L. Arango, Raul I. Martinez and Irma Henry Gomez alias Irma Henry, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one John Rosado, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 2nd day of July, 1949, the said defendants presented and caused to be presented to the United

States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said John Rosado, because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Public Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

In.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

Count Thirty-Five.

The Grand Jury further charges:

That on or about the 24th day of January 1951, at and in the County of Dade, State of Florida, in the

Southern District of Florida, Alberto L. Arango, Raul I. Martinez, John Sese and Joa O. Antonio Fares alias Joa Fares alias Joe Fares and Domingo Zabalgogezcoa alias Domingo Zabal, herein called defendants, did make and present, and cause to be made and presented to a person in the civil, military or naval service of the United States, to-wit: to a person authorized and designated to receive the same, in the office of the United States Veterans Administration, a further description of said person being to the Grand Jury unknown, a claim upon and against the United States or an agency thereof, to-wit: a claim against the United States Veterans Administration for compensation claimed to be due to The Berlitz School of Languages of America, Inc., which will hereinafter be referred to by the name "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one Frank C. Spada, the defendants well knowing such claim to be false, fictitious and fraudulent in this:

On the 24th day of January, 1951, the said defendants presented and caused to be presented to the United States Veterans Administration for approval and payment an invoice on behalf of Berlitz wherein it was stated and claimed that there was due and payable to said Berlitz from said United States Veterans Administration the sum of $350.00 as tuition or compensation for 100 hours of instruction theretofore claimed to have been given to said Frank C. Spada because it was claimed that said Berlitz had given and caused to be given to said trainee 100 hours of instruction, pursuant to the provisions of The Servicemen's Readjustment Act of 1944, also known as Pub-

lic Law 346 of the 78th Congress, and was entitled to be paid therefor, whereas, in truth and in fact as the defendants well knew, there had not been given to said trainee as many as said 100 hours of instruction, and there was not due to said Berlitz therefor as much as $350.00.

Jdgmnt. of Acquittal.

And so the Grand Jury charges that, in the manner and form aforesaid, the defendants did make and present, and cause to be made and presented, to a person or officer in the civil, military or naval service of the United States or an agency thereof, a claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent.

(Title 18, Section 287, United States Code.)

A True Bill.

(Illegible),
Foreman.

FRED BOTTS,
Assistant United States Attorney.

RECITATION.

As to Item (b) of the Designation, being Transcript of the minutes taken by the Official Court Reporter at the trial conference had before Honorable Emett C. Choate, showing that at said trial conference the Court granted permission to co-defendants to inspect

written statements or confessions made by them to the Federal Bureau of Investigation, but denied the defendant, Gabriel Gomez, the right to inspect such statements; this is found in the pre-trial minutes filed February 29, 1956, and appears on page 15, beginning with paragraph 4 to and including paragraph 6 of the transcript and is in the words and figures as follows:

The Court:

All right. Any other matters that you would like to bring to the Court's attention. Counsel may inspect any written statements that may be in the possession of the Government that were signed by any of the defendants. You may copy them if you so desire.

Mr. Sabatino:

Does that apply only to a lawyer's client, or may we inspect other statements since this is a conspiracy case, and there are co-defendants?

The Court:

No, I think not, because that might cause some stress and strain which should not be caused.

RECITATION.

As to Item (d) of the Designation, being Order Consolidating indictments and information there was no formal order entered, but was granted in open Court, please see stipulation filed July 19, 1956 and found on page 112 of this record.

RECITATION.

As to Item (e) of the designation, being Minutes of Pre-Trial Conference before the Honorable Emett C. Choate taken by the Official Court Reporter showing objection of Defendant, Gabriel Gomez to the Consolidation mentioned in c and d of the Designation, please refer to Stipulation filed July 19, 1956 and found on page 112 of this record.

RECITATION.

As to Item (f) of the designation, being Minutes of the Official Court Reporter showing voir dire by the presiding Judge, Clerk of this Court, Attorney for the Defendant, Gabriel Gomez and jurors' oath only insofar as the same concerns the juror, Charles North, please see Certificate filed July 19, 1956, and found on page 111 of this Record.

On January 28, 1955 ORDER GRANTING MOTION TO DISMISS INDICTMENT AS TO GABRIEL GOMEZ was filed in Case No. 8249-M-Cr. and is in the words and figures as follows:

(Caption Omitted.)

This cause having been heard in open Court on motion to dismiss the indictment returned herein as to the defendant, Gabriel Gomez, and the Court having heard argument of counsel for the United States of

America and said Gabriel Gomez, and the Court being fully advised in the premises:

It Is, Therefore, Ordered and Adjudged that said indictment is insufficient as to said Gabriel Gomez and, therefore, the same is hereby dismissed, as to the said Gabriel Gomez.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 28th day of January, 1955.

EMETT C. CHOATE,
District Judge.

On February 13, 1956 MOTION TO CONSOLIDATE INFORMATIONS AND INDICTMENTS was filed in the words and figures as follows:

(Title Omitted.)

Comes now the United States of America and respectfully moves this Court for an order consolidating for the purpose of trial case No. 8102-M-Cr. the same being United States of America v. Alberto L. Arango, Joa O. Antonio Fares alias Joa Fares alias Joe Fares, Carlos B. Fernandez, Gabriel Gomez, Mario Gomez, Samuel Gomez, Irma Henry Gomez, alias Irma Henry, Mario Martinez, Raul I. Martinez, Eugeno G. Ponce, Humberto Recio, John Sese and Domingo Zabalgogezcoa; it being respectfully shown that the above entitled case is one involving instructors and officials of the Berlitz School of Languages at Miami, Florida, in which indictment the above-named defendants are charged with a violation of Title 18, Section

286, Title 18, Section 2, Title 18, Section 287 and Title 18, Section 1001 in an indictment containing 35 counts.

In each of the said counts of the indictment, the defendants in the above-named case are charged with specific violations involving specific students.

It is further shown to this Court that the case of U.S. v. David Cohen, No. 9412-M-Cr., U.S. v. Hulsh, No. 9413-M-Cr., U.S. v. Frank Klein, No. 9414-M-Cr., U.S. v Irving G. Lacov, (Information) No. 9415-M-Cr, U.S. v. Paul L. Mancuso, No. 9419-M-Cr., Carl J. Maroccki, No. 9416, Newell F. Todd, No. 9417, John Basmajian, No. 9409-M-Cr., Jose Alvarez, (indictment) No. 9408-M-Cr., Abelardo Diaz, No. 9410-M-Cr., John E. Schultz, No. 9411-M-Cr., and Bernard Axman, (indictment) No. 9418-M-Cr., are charges brought either by information or by way of indictment charging each of the above-named students with violation of Title 38, Section 714, U.S.C. and further that all of the students and all of the individuals named in the indictment could have been named in the same indictment and that all of the offenses charged are of the same or similar character and are based on the same acts or transactions constituting parts of a common scheme or plan.

Under Rule 13 of the Federal Rules of Criminal Procedure the United States of America moves this Court for an order consolidating the hereinabove described cases for trial.

JAMES L. GUILMARTIN,
United States Attorney,
By J. EDWARD WORTON,
(J. Edward Worton),
Assistant U. S. Attorney.

On March 20, 1956 VERDICT was filed in the words and figures as follows:

"In the United States District Court in and for the Southern District of Florida, Miami Division.

No. 8162 M-Criminal.

United States of America,
vs.
Gabriel Gomez.

Miami, Florida
Date: March 19, 1956

We, the Jury, find the Defendant, Guilty All Counts as Charged.

So Say We All.

(S.) THOMAS P. CALDWELL,
Foreman".

On April 2, 1956, MOTION of Gabriel Gomez FOR NEW TRIAL was filed in the words and figures as follows:

(Title Omitted.)

The defendant, Gabriel Gomez, by and through his attorney, Louis A. Sabatino, moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

(a) The Court erred in not permitting the defendant's attorney to fully examine each juror on voir dire in order to fully determine if each of said jurors was subject to disqualification for prejudice, incompetence or other cause.

(b) That the Court's limitation of the defendant's attorney to fully examine each of said jurors has substantially prejudiced and deprived the defendant of a fair trial because only by detailed and continued questioning is the competence, prejudice and qualifications of a stranger discovered when he appears to serve as a juror.

(c) That the juror, Charles North (colored), who served as a juror in this case, was incompetent under the provisions of Title 28, Section 1861 (4), U. S. Code, which provides that a juror is not competent, if he is incompetent, to serve as a grand or petit juror by the laws of the State in which the district is held. Said juror, Charles North, was purged from the jury list of Dade County, Florida, in 1955, by reason of his not having been a qualified elector (see certifications hereto attached) and remained purged as aforesaid until Friday March 16, 1956, when he re-registered

with the Supervisor of Registration, Dade County, Florida, and thereafter became a qualified elector.

That the trial of the foregoing cause commenced on March 12, 1956 and a verdict was returned on March 20, 1956. A duly certified, photostat copy of the original registration record of Charles North, as taken from the files of the Supervisor of Registration, Dade County, Florida, is hereto attached and made a part hereof.

That the juror, Charles North, being disqualified by law as aforesaid, to serve on the jury in the above styled case, nevertheless, on his oath, stated to the Clerk of this Court that he was a qualified elector within this district, which sworn announcement he made prior to his taking his place in the jury box and prior to the examination of said jury on voir dire by the defendant's attorney, in consequence of which the defendant's attorney could not inquire into said juror's qualifications as a duly qualified elector, as required by law, due to his having answered, on his oath, the question pertinent thereto to the Clerk of this Court but not having truly answered such question of his qualification to serve on the jury as a qualified elector—thus the defendant could not ascertain the existence of said disqualification of said juror voir dire and therefore, could not waive his right thereto by not asserting said disqualification until after the verdict—the defendant having had the right to rely upon the correctness of said juror's sworn answer to the questions put to him by the Clerk of this Court, as aforesaid.

It is respectfully submitted that the matter of competence of a juror as commanded by law must be accepted by a defendant when the decision is left to rest on a juror's reply on his oath, to a pertinent inquiry when a juror states under oath that he is a qualified elector, a defendant has no alternative but to rely upon such sworn answer; he should not be required to seek a recess from the Trial Court (nor would he be likely to receive the same if he requested it), to go to the office of the Supervisor of Registration to check the official records.

Dated at Miami, Florida, April 2, 1956.

Respectfully submitted,

LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Defendant,
Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

The undersigned certifies having this 2nd day of April, 1956, delivered a true and correct copy of the foregoing motion for new trial to James L. Guilmartin Esq., United States Attorney, Federal Building, Miami, Florida.

LOUIS A. SABATINO,
(Louis A. Sabatino).

- North, Charles

DO NOT WRITE ABOVE THIS LINE

18-A

North Charles

LAST NAME FIRST NAME MIDDLE NAME

1875 N.W. 55 - Terr. Miami Fla.

STREET ADDRESS CITY STATE

Apt. Equal Legacy Miami

OCCUPATION DO YOU LIVE IN A MUNICIPALITY

54 13 w 1 3-16-56 Miami-Fla. ? 11-6-1

AGE PLACE OF BIRTH DATE OF REGISTRATION PLACE COUNTY DATE

NATURALIZATION DATE OF FOREIGN BORN

Have you ever been convicted of a

OATH: I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I SHALL PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND

THAT I AM TWENTY-ONE YEARS OF AGE, AND HAVE BEEN A RESIDENT OF THE STATE OF FLORIDA FOR TWELVE MONTHS; AND

SIX MONTHS; THAT I AM A CITIZEN OF THE UNITED STATES, AND THAT I AM QUALIFIED TO VOTE UNDER THE CONSTITUTION

OF FLORIDA; AND THAT THE STATEMENTS MADE HEREIN CONCERNING MY NAME AND TO QUALIFICATIONS OF AN ELECTOR ARE TRUE.

THAT I HAVE BEEN A RESIDENT OF MUNICIPALITY SINCE 1-1-45

LAST LOCAL ADDRESS

Ra-12-4-71

SIGNATURE OF VOTER

LAST VOTED IN 19 --

THIS REGISTRATION IS MADE IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA

SUBSCRIBED AND SWORN BEFORE ME

3-16-56

CARL HOLMER JR. SUPERVISOR OF REGIST

BY

LAST NAME FIRST INITIAL

Charles

18-A

Charles

55 - Terr. Miami Fla.

Miami

3-16-56 Miami-Fla. ? 11-6-46

Have you ever been convicted of a felony

OATH: I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I SHALL PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND

THAT I AM TWENTY-ONE YEARS OF AGE, AND HAVE BEEN A RESIDENT OF THE STATE OF FLORIDA FOR TWELVE MONTHS; AND

SIX MONTHS; THAT I AM A CITIZEN OF THE UNITED STATES, AND THAT I AM QUALIFIED TO VOTE UNDER THE CONSTITUTION

OF FLORIDA; AND THAT THE STATEMENTS MADE HEREIN CONCERNING MY NAME AND TO QUALIFICATIONS OF AN ELECTOR ARE TRUE.

THAT I HAVE BEEN A RESIDENT OF MUNICIPALITY SINCE 1-1-45

SIGNATURE OF VOTER

SUBSCRIBED AND SWORN BEFORE ME

3-16-56

CARL HOLMER JR. SUPERVISOR OF REGISTRATION

BY

LAST NAME FIRST INITIAL

78

DO NOT WRITE OVER THIS LINE

REGISTRATION NO	PARTY AFFILIATION

LAST NAME | FIRST NAME | MIDDLE NAME

STREET ADDRESS | CITY | STATE | MAILING ADDRESS: CITY | COUNTY

AGE	OCCUPATION	DO YOU LIVE IN A MUNICIPALITY		FREE HOLDER	SEX	COLOR

PLACE OF BIRTH	DATE OF REGISTRATION	PLACE	NATURALIZATION DATA (IF FOREIGN BORN): COURT	DATE	NUMBER

Investigator Purge - 1955

INVESTIGATOR P.R.G. 1955

OATH I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF FLORIDA; THAT I AM TWENTY-ONE YEARS OF AGE, AND HAVE BEEN A RESIDENT OF THE STATE OF FLORIDA FOR TWELVE MONTHS AND OF THE COUNTY FOR SIX MONTHS; THAT I AM A CITIZEN OF THE UNITED STATES AND THAT I AM QUALIFIED TO VOTE UNDER THE CONSTITUTION AND LAWS OF THE STATE OF FLORIDA; AND THAT THE STATEMENTS HERE ENTERED OPPOSITE MY NAME AS TO QUALIFICATIONS OF AN ELECTOR ARE TRUE. I DO FURTHER SWEAR THAT I HAVE BEEN A RESIDENT OF MUNICIPALITY SINCE 1 1 [illegible]8

R. A. GRAY, SECRETARY OF STATE

Charles North
SIGNATURE OF VOTER

HERE INITIAL PARTY AFFILIATION

THIS REGISTRATION IS MADE IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA

SUBSCRIBED AND SWORN TO BEFORE ME

CARL HOLMES JR. SUPERVISOR OF REGISTRATION

BY _____ DEPUTY
LAST NAME | FIRST NAME | MIDDLE NAME

North, Charles

DATE	PRECINCT	CHANGE OF ADDRESS	DATE	PRECINCT	CHANGE OF ADDRESS

VOTING

YEAR	CITY	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46
1ST PRIMARY																				
GENERAL																				
SPECIAL																				

Office of
Carl Holmer, Jr.
Supervisor of Registration
Dade County
Miami, Florida

State of Florida,
County of Dade.

I, Carl Holmer, Jr., Supervisor of Registration in and for Dade County, Florida, Do Certify that the attached Photostats are true and correct, made from original registration records of Charles North, as taken from among my files.

Witness My Hand and Official Seal at Miami, Dade County, Florida, this 23rd day of March 23, 1956.

CARL HOLMER, JR.,
(Carl Holmer, Jr.),
OTTO HOLMER,
Supervisor of Registration.

Office of
Carl Holmer, Jr.
Supervisor of Registration
Dade County
Miami, Florida

State of Florida,
County of Dade.

I, Carl Holmer, Jr., Supervisor of Registration in and for Dade County, Florida, do hereby certify that when an elector is purged from the voting records in our office we send his name down to the Clerk of the Circuit Court of the 11th Judicial Court and said person remains purged from our voting records until he comes in in person and re-registers.

Witness My Hand and Official Seal at Miami, Dade County, Florida, this 2nd day of April, 1956.

CARL HOLMER, JR.,
Supervisor of Registration,
Dade County, Florida,
OTTO HOLMER.

State of Florida,
County of Dade. ss.

I, E. B. Leatherman, Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Do Hereby Certify that when the Supervisor of Registration furnishes this office with a list of those persons purged from the Registration Roll the procedure followed in this office is to withdraw said names from our Jury Card files and destroy same, since they are not qualified Jurors, in compliance with Section 40.01 of the Florida Statutes. No record of this destruction is made or kept.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Circuit Court on this the 2nd day of April, A. D. 1956.

E. B. LEATHERMAN,
Clerk Circuit Court,
By L. G. MOORE,
Deputy Clerk.

On April 4, 1956 JUDGMENT and COMMITMENT was filed in the words and figures as follows:

United States District Court for the Southern District of Florida.

United States of America,
v. No. 8162-M-Cr.
Gabriel Gomez.

On this 4th day of April, 1956 came the attorney for the government and the defendant appeared in person with counsel, Louis Sabatino, Esq.

It Is Adjudged that the defendant has been convicted upon Verdict of Guilty as to counts #2, 25, 26, of the offense of unlawfully and knowingly did combine, conspire, confederate, and agree with others to defraud the United States and did claim upon and against the United States, or an agency thereof, knowing such claim to be false, fictitious and fraudulent, 18 USC 371 and 287 as charged in the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Fifteen (15) Months on count #2. It Is Further ordered that the defendant pay unto the

United States of America a fine in the sum of $3000.00 and in default of payment of said fine that he stand committed to the County Jail of Dade County until the payment of said fine or until discharged by due process of law.

It is further ordered that the defendant be committed to the custody of the Attorney General of the United States for a period of One (1) Year on count #25 and One (1) Year on count #26, sentence on each count to run concurrently with each other and concurrently with sentence imposed on count #2 of the Indictment. It is further ordered that the defendant pay unto the United States of America a fine in the sum of $1000.00 on count #25 and $1000.00 on count #26, and in default of payment of said fine that he stand committed to the County Jail of Dade County until the payment of said fine or until discharged by due process of law.

It is further ordered that $500.00 of the fine imposed on count #25 and $500.00 of the fine imposed on count #26 be, and the same is hereby remitted. Defendant is hereby given 12 months in which to pay the fines imposed herein on counts #2, 25 and 26.

Defendant to surrender himself to the Marshal, 9:30 A.M., April 16th, 1956.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EMETT C. CHOATE,
United States District Judge.

On April 9, 1956 ORDER EXTENDING TIME WITHIN WHICH DEFENDANT GABRIEL GOMEZ may filed motion for new trial was filed in the words and figures as follows:

(Title Omitted.)

Louis A. Sabatino, defense counsel for the defendant, Gabriel Gomez, having on March 27, 1956 verbally moved this Court for an extension of five (5) days from March 26, 1956 within which to file a motion for a new trial for the defendant, Gabriel Gomez, and the Court not having received any objection to said motion by the United States Attorney or his assistant who were present at the time said oral motion was made, and the Court being fully advised in the premises;

It Is, Therefore, Ordered and Adjudged that the defendant, Gabriel Gomez, shall be permitted to file a motion for a new trial herein on or before April 2nd, 1956. (E.C.C.)

Done and Ordered at Miami, Dade County, Florida, this 27th day of March, 1956.

EMETT C. CHOATE,
District Judge.

On April 13, 1956 NOTICE OF APPEAL by Gabriel Gomez was filed in the words and figures as follows:

(Caption Omitted.)

Gabriel Gomez, defendant, a resident of, and domiciled at 1944 S. W. 82nd Place, Miami, Dade County, Florida, by and through his authorized attorney, Louis A. Sabatino, 923 duPont Building, Miami, Florida, submits this, his notice of appeal in the above styled cause wherein the defendant was charged with the following, viz:

(a) 18 USCA 287 (one count—conspiracy).

(b) 18 USCA 371 (two counts—substantive charges)

The defendant having been found guilty of said offenses by verdict of the jury that heard the trial of said defendant on March 20 1956, and the defendant having been adjudged guilty thereof by the presiding District Judge on March 20, 1956 and sentenced on April 4, 1956, but enlarged on bail pending this appeal.

Wherefore, the above named appellant hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated at Miami Dade County, Florida, this 13th day of April, 1956.

(S.) LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Defendant,
Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

On April 24, 1956 ORDER on motion for new trial, etc., was filed in the words and figures as follows:

(Caption Omitted.)

This cause coming on before me this 4th day of April, 1956, upon the motion of the defendant Gabriel Gomez for new trial and for motion in arrest of judgment and motion for judgment of acquittal and upon the motion for new trial on behalf of defendant Alberto L. Arango and for motion for judgment of acquittal and upon the oral motion of the defendant in arrest of judgment and further, upon the motion of the defendant Irma Henry Gomez, alias Irma Henry, on the motion for judgment of acquittal or in the alternative motion for new trial and upon motion for arrest of judgment, and the Court having heard arguments of respective counsel for the defendants herein and counsel for the United States of America, it is Ordered that defendant Gabriel Gomez's motion for new trial be and the same is hereby denied; defendant Gabriel Gomez's motion for judgment of acquittal orally made before this Court be and the same is hereby denied. It is further,

Ordered that the oral motion of the defendant Gabriel Gomez made with respect to an arrest of judgment addressed to counts 28 and 29 be and the same is hereby granted on the grounds that the statute of limitations governing the commission of the offense had tolled prior to the return of the indictment. It is, further

Ordered that the defendant Alberto L. Arango's motion for new trial be and the same is hereby denied. It is, further

Ordered that the defendant Alberto L. Arango's motion for judgment of acquittal be and the same is hereby denied. It is, further

Ordered that defendant Alberto L. Arango's oral motion for arrest of judgment in counts 3, 4, 15, 16, 28, 29 and 34 be and the same is hereby granted on the grounds that the applicable statute of limitations had tolled prior to the return of the indictment on those respective counts. It is, further

Ordered that the defendant Irma Henry Gomez's motion for judgment of acquittal or in the alternative for a new trial be and the same is hereby denied. It is further

Ordered that the defendant Irma Henry Gomez's motion in arrest of judgment as to count 34 be and the same is hereby granted on the grounds that the applicable statute of limitations had tolled prior to the return of the indictment with respect to count 34.

Done and ordered at Miami, Florida, this 4th day of April, 1956.

EMETT C. CHOATE,
U. S. District Judge.

On May 2, 1956 STATEMENT OF POINTS was filed in the words and figures as follows:

(Caption Omitted.)

The defendant, Gabriel Gomez, by and through his undersigned attorney, submits this, the statement of

points on which he intends to rely on the appeal heretofore taken herein and submits said points to be as follows:

(a) The Court erred in not permitting the defendant's attorney to fully examine each juror on voir dire in order to fully determine if each of said jurors was subject to disqualification for prejudice, incompetence or other cause.

(b) That the Court's limitation of the defendant's attorney to fully examine each of said jurors has substantially prejudiced and deprived the defendant of a fair trial because, only by detailed and continued questioning is the competence, prejudice and qualifications of a stranger discovered when he appears to serve as a juror.

(c) That the juror, Charles North (colored) who served as a juror in this case, was incompetent under the provisions of Title 28, Section 1861 (4), U. S. Code.

(d) That the Court erred in consolidating indictments and information in this case over objection of the defendant Gabriel Gomez, as a result of which he was prejudiced at the trial and did not receive a fair and impartial trial.

(e) The Court erred in its instructions given to the jury which errors will be more particularly pointed out in an amendment to this "Statement of Points" when the undersigned has available to him the transcript of minutes of the official Court Reporter showing said instructions.

Dated at Miami, Florida, May 2, 1956.

(S.) LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Defendant
Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

The undersigned certifies having mailed to the Honorable James L. Guilmartin, United States Attorney, Federal Building, Miami, Florida, a true and correct copy of the foregoing pleading, this 2nd day of May, 1956.

(S.) LOUIS A. SABATINO,
(Louis A. Sabatino).

On May 2, 1956 DESIGNATION OF CONTENTS OF RECORD ON APPEAL was filed in the words and figures as follows:

(Caption Omitted.)

The defendant Gabriel Gomez, by and through his undersigned attorney, submits this, his designation of contents of record on appeal and thereupon respectfully requests the Clerk of this Court to include in said record the following:

(a) The indictment.

(b) A transcript of the minutes taken by the official Court Reporter at the trial conference had before the Honorable Emett C. Choate showing that at

said trial conference the Court granted permission t
co-defendants to inspect written statements or con
fessions made by them to the Federal Bureau of In
vestigation but denied the defendant Gabriel Gome
the right to inspect such statements.

(c) Motion by the United States of America t
consolidate indictments and information.

(d) Order consolidating indictments and informa
tion.

(e) Minutes of pre-trial conference before the Hon
orable Emett C. Choate taken by the official Court
Reporter showing objection of defendant, Gabrie
Gomez to the consolidation mentioned in c. and d
above.

(f) Minutes of the official Court Reporter showing
voir dire by the presiding Judge, Clerk of this Court
attorney for the defendant Gabriel Gomez and jurors
oath only insofar as the same concerns the juror
Charles North.

(g) Transcript of minutes of official Court Re
porter showing instructions of the Trial Judge to the
jury.

(h) The jury's verdict as to Gabriel Gomez.

(i) Order extending time within which to file mo
tion for new trial.

(j) Motion for new trial filed by the defendant
Gabriel Gomez, and all papers, documents and cer
tificates thereto attached and made a part thereof.

(k) Order denying motion for new trial.

(l) Notice of Appeal.

(m) This designation of contents of record on appeal.

(n) Statement of points and any amendments thereto which are hereinafter filed.

Dated at Miami, Florida, May 2, 1956.

(S.) LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Defendant
Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

The undersigned certifies having mailed a true and correct copy of the foregoing pleading to the Hon. James L. Guilmartin, United States Attorney, Federal Building, Miami, Florida, this 2nd day of May, 1956.

(S.) LOUIS A. SABATINO,
(Louis A. Sabatino).

On May 4, 1956 MOTION and ORDER EXTENDING TIME FOR FILING AND DOCKETING RECORD ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

This cause coming on to be heard before me on motion of the attorney of record for the defendant

Gabriel Gomez, which motion appears below, for an order extending the time within which to file and docket the record on appeal in this cause and it appearing to the Court that the official Court Reporter is presently burdened with a backlog of work, the Court being fully advised in the premises;

It is therefore

Ordered and Adjudged that the time within which to file and docket the record on appeal in the Case of Gabriel Gomez vs. United States of America pending in the United States Court of Appeals in and for the Fifth Circuit Case No. 16063, be and it is hereby extended to and including August 1st, 1956.

Done and Ordered in Chambers at Miami, Florida, this 4th day of May, 1956.

EMETT C. CHOATE,
United States District Judge.

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE AND DOCKET RECORD ON APPEAL.

Louis A. Sabatino, attorney for the defendant, Gabriel Gomez, respectfully represents unto the Court that the official Court Reporter is burdened with a backlog of work and is therefore unable to presently comply with the designation of contents of record on appeal heretofore filed herein.

Wherefore, the movant respectfully prays that this Honorable Court enter its order herein extending the

time within which to file and docket the record on appeal.

Dated at Miami, Florida, May 4, 1956.

LOUIS A. SABATINO
(Louis A. Sabatino).

923 duPont Building,
Miami 32, Florida.

Filed Before Me this 4th day of May, 1956.

EMETT C. CHOATE,
United States District Judge
E.F.S.

On June 27, 1956 ADDITIONAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL was filed in the words and figures as follows:

(Title Omitted.)

The defendant, Gabriel Gomez, by and through his undersigned attorney, submits this, an additional designation of contents of record on appeal and thereupon respectfully requests the Clerk of this Court to include in said record on appeal in addition to that heretofore requested, the following:

(o) Order granting motion to dismiss indictment as to Gabriel Gomez, entered on January 28, 1955, by the Honorable Emett C. Choate, District Judge, in the Case of United States of America vs. Alberto L. Arango, Raul I. Martinez, Gabriel Gomez and John Edward Schulte, which case was pending in the Dis-

VOTING RECORD

		46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64
COUNTY STATE	1ST PRIMARY																			
	2ND PRIMARY																			
	GENERAL			X		X														
	SPECIAL					X														
YEAR																				
CITY	1ST PRIMARY																			
	GENERAL																			
	SPECIAL																			

CHANGE OF ADDRESS	PRECINCT	DATE	CHANGE OF ADDRESS	PRECINCT	DATE

trict Court of the United States for the Southern District of Florida, Miami Division, Case No. 8249-M-Criminal.

Dated at Miami, Florida, June 26, 1956.

LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

The undersigned certifies having delivered a true and correct copy of the foregoing pleading to the Honorable James L. Guilmartin, United States Attorney, Federal Building (Post Office), Miami, Florida, this 26th day of June, 1956.

LOUIS A. SABATINO,
(Louis A. Sabatino).

On June 28, 1956 TRANSCRIPT OF TRIAL PROCEEDINGS was filed in the words and figures as follows:

(Title Omitted.)

Miami, Florida.

The above entitled cause came regularly on for trial before the Hon. Emett C. Choate, United States District Judge, and a jury duly impaneled and sworn to try the same in open Court on March 7, 8, 12, 13, 14, 15, 19 and 20, 1956, at Miami, Florida.

Appearances:

Edward Worton, Assistant United States Attorney, appearing on behalf of the Plaintiff.

Louis Sabatino Esq., appearing on behalf of the Defendant.

Charge of the Court.

Members of the jury, at the end of the case it becomes the duty of the Court to instruct you as to the law applicable in the case.

As this case started out if you recall, we had three cases combined for trial. During the course of the trial, by virtue of certain Orders made by the Court, two of the cases were dropped, and we are now deciding only one case, and that is the main conspiracy case with its attendant substantive charges.

Now the case is not too complicated as it now exists, becaus it involves only the Director and two of the Instructors in that School, and if you will recall the evidence the charges are substantially the same in all the various counts in this indictment.

The first count of the indictment is what is known as a conspiracy count, and that charges that Mr. Arango, one Fares, and one Fernandez, and Gabriel Gomez, Mario and Samuel Gomez, Irma Henry, and Mario Martinez, Raul Martinez, and one Ponce and one Recio, and one Sece, and one Zabal, did conspire, confederate and agree together and with divers other persons, to the grand jurors unknown, to commit certain offenses, that is, to violate Title 18, Section 287 of the United States Code, and Title 18, Section 287, provides that whoever makes or presents to any person or officer in the Civil, Naval or Military Service

of the United States, or to any Department or Agency thereof, any claim upon or against the United States or any Department or Agency thereof, knowing such claim to be false, fictitious or fraudulent, shall be punished, &c; and it also charges the conspiracy to violate Section 1001 of the same Title 18. Now 1001 of that Title provides that whoever in any manner within the jurisdiction of any Department or Agency of the United States knowingly and wilfully falsifies steals, or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false or fictitious or fraudulent statement or entry, shall be punished, and so forth; and it also charges that they conspired to violate Title 18, Section 2, of the United States Code, which provides, whoever commits an offense against the United States or aids, abets, counsels, commands, produces or procures its commission, is punishable as a principal. Whoever wilfully causes an act to be done, which, if directly performed by him, or another, would be an offense against the United States, is punishable as a principal.

Now I have gone over that particular conspiracy charge with you. It charges precisely that they violated these three sections which I have just read to you; and then it sets forth a number of overt acts. For instance, the first one, "Submitted for approval and payment an invoice claiming 15 hours of instruction for Sherman." and then another for Sherman, and so forth and so forth. You may have a copy of this indictment in your jury room if you need it, and Mr. District Attorney, I wish you would get out a copy and cross out the parts that have been elimi-

nated with red; so that the jury, if they do need it, they may have it.

Now in addition to the main charge of conspiracy, there are charges of a number of substantive offenses, which are charged as a violation of section 287 of the Act, and 287 I read to you right at the first, and that is, "whoever makes or presents to any person or officer, or to any Department or Agency of the Government, any claim upon or against the United States or any Department or Agency thereof, knowing such claim to be false, fictitious or fraudulent, shall," and so forth. Now those substantive acts again follow the same course; they are all the same charges except they involve different individuals. In the first one that remains, Alberto Arango with Martinez and others, not present today, are charged with making and presenting and caused to be made and presented to a person in the Civil, Military and Naval Service of the United States, to-wit, a person authorized and designated to receive the same in the office of the United States Veterans Administration, a claim upon and against the United States or an Agency thereof, with a claim against the United States Veterans' Administration for compensation claimed to be due to the Berlitz School of Languages, which will hereafter be referred to by the name of "Berlitz", for tuition or compensation for instruction claimed to have been given by Berlitz to a certain trainee, to-wit, one E. B. Sherman, the defendants well knowing such claim to be false and fictitious and fraudulent," and it goes on and recites a certain number of hours in which instruction was not given.

Now there are two counts against Arango and others, and Martinez and certain others not present, three counts, charging as respects to certain checks

received by E. B. Sherman, who testified, one of the men whom you will recall.

Then follows two counts against the same group, or substantially the same group, Arango and others, who are not present; two counts for checks received by Slader; then one count against Arango and others, not present, a check received by Edward Greenfield; and another like count for a check received by Paul M. Baker; and another like count for a check received by Walter Kalaba; and another like count for a check received by Joseph Bruce; and another like count for a check received by David Galabow, and another like count for a check received by Adolpho Abradie; then there is a count, the next one, is against Arango and others not present, and Gabriel Gomez, procuring, or, as it states, did make, present and cause to be made and presented, and so forth, arising out of a check by Jimmie Blackstock; and another like count involving Arango and Gomez and others, for a check received by Philip Saunders; and another like count involving Arango, Gomez and others, for a check received by Arthur Porter; and another like count involving, Arango, Gabriel Gomez and others, for a check received by Arthur Porter; and then a last count of the same type and same kind, same charges, except the amounts named are different, involving, Arango, Irma Henry, and Gabriel Gomez, and the pupil in that case was John Rosado. So keep in mind the type of charges, and keep in mind that there is the Director and two teachers involved. Keep in mind that the first charge is a conspiracy charge which involes all the defendants. The other charges all involve Mr. Arango, and about three or four of them involve Gomez, and one involves Miss Henry.

Now if you will recall I mentioned the law that one who aids or abets in a crime, or the accomplishment of a crime and commits an offense against the United States of America, is guilty as a principal, and in such instances and other instances they may called what is termed, "accomplices", and I have been asked to give you the rule of evidence as affects accomplices, because a number of people have testified here who might not or may have been involved in the accomplishment of this crime, and if you so decide, they may undoubtedly be termed as accomplices.

You are instructed that while it is the rule of law that a person may be convicted upon the uncorroborated testimony of an accomplice,—that means, his testimony alone without any corroboration by way of records, books or other facts or circumstances, still the jury should always act upon such testimony with great care and caution, and subject it to careful examination in the light of all the other evidence in the case; and the jury ought not to convict upon such testimony alone, unless, after a careful examination of such testimony they are satisfied beyond all reasonable doubt of its truth.

There have been two witnesses here who are what we term, "Character witnesses." The jury are instructed that good character is to be considered just as any other fact in the case if it be established by the testimony in the case. The testimony in respect to character is to be weighed and considered with all the other evidence, and to have such weight as the jury should deem it is entitled to under all the evidence in the case. Good character, when considered in connection with other evidence in the case, may generate a reasonable doubt sufficient to justify you

in acquitting the defendant. You will note use of the word "may", means it is up to you.

You are the sole judges of the weight of the evidence, its weight and sufficiency, and the credibility of the witnesses. It is your duty to seek to reconcile the testimony of the witnesses so as to make each witness speak the truth, but if after a full and fair consideration of all the testimony you find an irreconcilable conflict in the testimony, then you must determine what testimony is true and reject such testimony as you disbelieve, and from the testimony you believe, find your verdict.

The defendants under the laws of the United States of America are permitted to be sworn and testify, and their testimony, where they do testify, goes to you to be considered by you with all the other testimony in the case. The fact that a defendant did not testify, however, is a privilege that he enjoys and you are not to take that as any intent against him by reason of the fact he did not testify.

In passing upon the credibility of a witness it is proper that you take into consideration the manner of the witness on the witness stand, his or her candor, or want of candor, his or her intelligence or otherwise, the reasonableness or unreasonableness of his statement, his interest, if any he has, and all the circumstances surrounding such witness at the time of the giving of his testimony, and at the time of the happening of the event testified about.

The accused is always presumed to be innocent of the offense charged until he or she is proven guilty, and to overcome this presumption, and to establish his or her guilt, it is not sufficient to furnish a mere preponderance of evidence tending to prove his or her guilt, nor to prove a mere probability of his or her

guilt, but proof of guilt to the exclusion of and beyond a reasonable doubt is indispensable.

The burden of such proof is on the Government, and it is to the evidence introduced upon the trial, or the lack of evidence, that the jury are to look for such proof.

Keeping this in mind as jurors charged with the solemn duty in hand, you must carefully, impartially and conscientiously consider, compare and weigh all the testimony before you arrive at a verdict. Now in this connection keep in mind that what the attorneys have stated that the testimony shows, is not testimony. That's just their memory of it, and perhaps their version of it. I recall in one instance, I think Mr. Worton said the testimony showed that Mr. Arango, I believe it was, was receiving money as kickbacks. I don't recall that testimony. The only testimony I recall that he testified that another man was receiving money, or apparently was, and that that other man at one time had laid some amount on Mr. Arango's table. That is not testimony. The testimony must come from this stand, and on that particular matter or any other matter you have got to take the testimony that comes from the stand, and it has to be your memory, and not the attorneys' memory, not even my memory as respects to testimony, although if I have commented upon the testimony you will give it serious consideration; but you are the final and ultimate judges of that.

Now the Court instructs the jury that they should believe a witness or witnesses whom they consider most worthy of belief, and that in order to arrive at a conclusion as to which are most worthy of belief they must look to the manner of the witness while testifying, their means of knowledge as disclosed by

the evidence, their bias or prejudice, if any has been shown by the testimony, and should see to what extent they have been corroborated, if at all.

As I have stated before, you are the exclusive judges of the evidence and the credibility of the witnesses. You will take the law as given you in these instructions by the Court. In weighing and reconciling the testimony you should look to the manner and demeanor of the witness testifying, his or her readiness or willingness or tardiness or unwillingness in answering upon one side or the other, if such be a fact; whether the witness has any bias or feeling or not, his or her relationship to any of the parties in interest, to the witness's means of knowledge of the facts he testifies to or professes to know and undertand, to his or her chance or opportunity for knowing the facts; the reasonableness or unreasonableness of the story told, to its probability or improbability; whether the witness has made contradictory statements or not about material matters involved in the case; and having thus carefully considered all the matters, the jury must fix the weight and value of the testimony of each and every witness, and the evidence as a whole.

Your judgment of the facts should be your own uninfluenced judgment, uninfluenced by the Court except you are bound to follow the law of the case as the Court gives it to you, and uninfluenced by any insistence of counsel.

Going back to the testimony, there has been some comment about that $300,000.00, but the evidence is not clear on that matter, but I assume from what I understand of the evidence, that probably was a settlement of the claims against both these Schools down here in Miami, not altogether this particular one School.

I think you will remember that Puerto Rican,—there was some discussion of his testimony by several counsel. As I recall his testimony was read to you by Mr. Sabatino where he made categorical denials of going to School, and other things, and I think, as far as I know, that is what he did testify to, so as to clarify any confusion that may have arisen in your mind as to what he did testify to.

Now coming back to the first count, or the second count, it is, the one remaining in this particular indictment, I want to discuss briefly with you what a conspiracy is. A conspiracy is a combination between two or more persons by concert of action to accomplish a criminal or unlawful purpose, or some purpose, not in itself criminal or unlawful, by criminal or unlawful means. Now a conspiracy within the contemplation of law means an agreement, however the same may be arrived at, to do an act which would be in violation of one of the Criminal Statutes of the United States involved in this indictment. Conspiracy does not necessarily mean the parties got together by solemn agreement and agreed on the details as to what was to be done, or agreed as to the part that each person would play in the conspiracy. It is sufficient if either expressly or tacitly there was a meeting between two or more minds to do the unlawful act or acts that are charged in this indictment; and if you recall, I said; to do those acts or to aid in doing them under that other particular provision embraced in the indictment. There are two ways in which the law permits proof of conspiracy. One is, by a witness or witnesses who overheard the unlawful agreement. The other is by proving such by a series of acts from which the jury may find and conclude establishes beyond a reasonable doubt that there

was a concert of design between the persons charged with conspiracy. So that it is not necessary to show the actual agreement if the facts and circumstances shown convince the minds of you, the jury, beyond a reasonable doubt that there was an unlawful agreement. But if you found that there was an unlawful agreement and nothing else appeared, you would not be authorized to convict unless the Government has proved beyond a reasonable doubt one or more of the alleged overt acts that are described in this conspiracy indictment, which I charge you to look to. In other words, there are a great number of overt acts charged there, and you will have to find that one or more of them did take place before you can find any defendant guilty on that conspiracy count; and at this point let me state to you that you are to take these charges severally,—not pick out one and travel on that, but all together in trying to arrive at your conclusion as to whether the evidence under the law permits you to find a defendant guilty, or whether it permits you to find them not guilty as the case may be, and you are to consider each defendant's guilt or innocence separately from the others in arriving at your conclusions.

The law permits that after the formation of an agreement a place or time of repentance, and if the conspirators get together and agree to commit an offense, the law does not make that punishable until some act has been done by one or more of the conspirators in furtherance of the conspiracy in order to effect the object thereof. Then when these two things occur, the unlawful agreement and the commission of an overt act, the conspiracy is thereby put into operation. Thereafter, during the operation of the conspiracy the acts and omissions of one becomes the

acts and omissions of all of the conspirators, for in the eye of the law where one of the conspirators is doing anything in furtherance of the conspiracy, all the other conspirators are there with him present in the eyes of the law, and the acts and declarations of one, becomes the acts and declarations of the other, if it is in furtherance of the conspiracy, and to effect the object thereof.

As to the objectives of the conspiracy it is not necessary for the Government to prove in this case the perpetration of all the alleged objectives of the conspiracy as set forth in the indictment. It is sufficient if the Government proves the conspiracy, or the unlawful agreement, beyond a reasonable doubt, and that the perpetration of one or more of the objectives of such conspiracy or any one or more of the objectives alleged, and such objective was a violation of the Federal law described in the indictment. As to the overt act and alleged acts alleged in the indictment, it is likewise not necessary for the Government to prove all of such overt acts. It is sufficient if the Government proves the conspiracy or the unlawful agreement beyond a reasonable doubt, and the commission of either one or more of the overt acts charged in the indictment.

You are instructed that the common design is the essence of the charge, and while it is necessary in order to establish a conspiracy to prove a combination of two or more persons by concert of action to accomplish the criminal or unlawful purpose, it is not necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly by words or in writing state what the unlawful scheme was to be, and the

details of the plans or the means by which the unlawful combination was to be made effective. It is sufficient if two or more persons in any manner or through any contrivance, privately or tacitly, come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. The design must be unlawful as respects to the laws of the United States. That is, it must be a design to violate some Criminal Satute of the United States.

In the event you find there has been a conspiracy between two or more of the defendants in this case, then it is also for you to determine if any of the witnesses who testified in the case were accomplices of the defendants that you find to be members of the conspiracy. In considering the testimony of accomplices the law requires that such testimony be closely scrutinised and accepted with caution as I have heretofore stated to you. That instruction was submitted by one of the defendants in this case.

You are instructed that the defendant, Irma Henry, is charged in count 2 in case No. 8162-M.Criminal, that is the conspiracy count, with conspiring with others to commit an offense against the laws of the United States, and the Court charges you that the gist of the offense of conspiracy is an agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to

effect the object of the conspiracy. To support the charge of conspiracy the intent to conspire must be shown. Therefore, unless you find that the defendant, Irma Henry, knowingly entered into an agreement with Alberto L. Arango, Joe Fares, Carlos B. Fernandez, Gabriel Gomez, Mario Gomez, Samuel Gomez, Mario Martinez, Raul I. Martinez, Eugenio C. Ponce, Humberto Recio, John Sese, and Domingo Zabal, or one or more of them, to commit an offense against the United States, and that the defendant, Irma Henry, had then and there the intent to so conspire and agree with the defendants just named, you must find the defendant, Henry, not guilty. That was given by Irma Henry, and here is another one from her attorney.

You are instructed that circumstantial evidence has been introduced in this case. You are instructed that where circumstantial evidence is relied on, such circumstantial evidence, in order to be sufficient to form the basis for a conviction, must point not to the possibility or probability, but to the moral certainty of guilt. That is, the inferences which may reasonably be drawn from such circumstantial evidence as a whole must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. This rule applies with the same force where conspiracy is the charge, as where substantive offenses are involved.

Now the defendant, Arango, has given certain instructions.

In order to constitute the crime of conspiracy, an intention to become a party to an illegal enterprise must be predicated on some affirmative actions. An accused must join in the agreement to be guilty for, even if he commits an overt act, he does not violate

the law unless he joins in the agreement, and he must know the purpose of the conspiracy.

An intention to become a party to an illegal enterprise must be predicated on some affirmative action, and a person having no knowledge of a conspiracy cannot be a conspirator.

The guilt or innocence of a defendant in a criminal case is not determined by the number of witnesses called on each side, it depends upon the total amount of credible evidence adduced; and in order to convict on credible evidence introduced, the Government must establish beyond a reasonable doubt each and every of the several elements of the crime or crimes charged before you are permitted to convict the defendant.

An agreement means the meeting of two or more minds on a joint enterprise.

In a criminal prosecution for conspiracy, the unlawful combination and conspiracy rather than the overt acts done in pursuance of it, constitute the essential element of the offense. However, you must find that one or more of the overt acts was performed, and agreements can be established by circumstances, as I have already told you.

Any of you gentlemen notice any instruction that I have overlooked?

Mr. Sabatino:

I don't think so, Your Honor.

The Court:

Now we have talked about reasonable doubt, so I will give you a definition of reasonable doubt which will be helpful to you.

Reasonable doubt does not mean every possible doubt, but reasonable doubt means that kind of a doubt that would make a person hesitate to act, rather than the kind upon which he would be willing to act. If after you have carefully considered and weighed all the evidence in the case proffered by both sides in the light of the law which the Court now gives you, you have a full, firm and abiding conviction to a moral certainty that any defendant is guilty as charged in any count of the indictment, then his or her guilt has been established beyond a reasonable doubt.

If you do not have such a full, firm and abiding conviction after you have carefully considered and weighed all the evidence in the case proffered by both sides in the light of the law which the Court now gives you, then his or her guilt, as respects to that count under consideration has not been established beyond a reasonable doubt.

When you retire you will select one of your members as foreman of the jury. Your verdict will be guilty or not guilty as respects to each of the three defendants that may be involved in any one of these counts; and you might say, on count 2, "The defendant, John Doe, guilty," and somebody else, perhaps, "Not Guilty," and so forth and so forth.

A form of verdict has been prepared by the Clerk, and the Clerk will hand you that form.

Have you found a copy of this indictment?

Mr. Worton:

I will have to go to my office, Judge.

The Court:

All right. Go to your office and bring out a copy so the jury will have that.

Now furthermore, if you,—there has been a mass of evidence introduced in the nature of Exhibits. Now all the evidence is either oral evidence that comes from the witness stand, or it comes from the Exhibits introduced in evidence. Any of these Exhibits that you think you need in the juryroom, you will request the Marshal to bring them in to you, and he will do so.

Will the lawyers for the Government come over here while I mark up the indictment.

(Thereupon counsel approached the bench.)

The Court:

All you all satisfied that we give this to the jury?

(Counsel reply in the affirmative.)

The Court:

Mr. Reporter, you will identify it by your initials and the date, that it is a true copy of the indictment showing the counts that have been eliminated and crossed out by a heavy red line. . .

Will you now retire and consider your verdict. The alternates at this time will be dismissed from further consideration of this case. You have done your duty, by standing by.

On July 19, 1956 CERTIFICATE OF CLERK OF COURT RELATIVE TO ADMINISTRATION OF OATH AND INTERROGATION OF JUROR was filed in the words and figures as follows:

(Caption Omitted.)

I, Julian A. Blake, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records of said Court, do hereby certify that Mr. Charles North was duly summoned for jury duty in this Court and reported for service on February 27, 1956, and among others was administered the following oath in open Court on that date:

"You and each of you do solemnly swear that you will true answer make to all such questions as may be propounded to you touching upon your qualifications to serve as petit jurors in this Court.

So help you God."

I further certify that ten qualifying questions were propounded to Mr. North and other prospective jurors among which the following question was propounded and that an affirmative answer was given:

"Are you a duly qualified elector in the County from which you are summoned?"

I further certify that said Mr. Charles North, the above named juror, served as a juror in the trial of the above styled cause.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, this 19th day of July, 1956.

JULIAN A. BLAKE,
Clerk, U. S. District Court,
Southern District of Florida,
By (S.) EARLE F. SPRIGG,
Chief Deputy Clerk.

(Court Seal.)

On July 19, 1956 STIPULATION ACKNOWLEDGING OBJECTION TO CONSOLIDATION OF CASES BY GABRIEL GOMEZ was filed in the words and figures as follows:

(Caption Omitted.)

The undersigned Assistant United States Attorney, for and in behalf of the United States of America, and Louis A. Sabatino, as attorney for the defendant, Gabriel Gomez, hereby stipulate and acknowledge that the defendant, Gabriel Gomez, objected in open Court prior to the trial of the foregoing case to the consolidation for trial of the foregoing case with the following cases:

United States vs. John Edward Schultz, et al., Case No. 8249;

United States vs. John Basmajian, et al., Case No. 8227.

Dated at Miami, Florida, July 19th, 1956.

JAMES L. GUILMARTIN,
United States Attorney,
By (S.) J. EDWARD WORTON,
(S.) LOUIS A. SABATINO,
(Louis A. Sabatino),
Attorney for Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

On July 19, 1956 SECOND ADDITIONAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL was filed in the words and figures as follows:

(Caption Omitted.)

The defendant, Gabriel Gomez, by and through his undersigned attorney, submits, this a second additional designation of contents of record on appeal and thereupon respectfully requests the Clerk of this Court to include in said record on appeal in addition to that heretofore requested, the following:

(p) A true copy of the Certificate of Clerk of Court relative to administration of oath and interrogation of juror;

(q) A true copy of Stipulation acknowledging objection to consolidation of cases by Gabriel Gomez;

(r) A true copy of this, the second additional designation of contents of record on appeal.

Dated at Miami, Florida, July 19th, 1956.

(S.) LOUIS A. SABANTINO,
(Louis A. Sabatino),
Attorney for Gabriel Gomez.

923 duPont Building,
Miami 32, Florida.

(Certificate of mailing.)

On July 19, 1956 ORDER EXTENDING TIME FOR FILING AND DOCKETING OF RECORD ON APPEAL was filed in the words and figures as follows:

(Caption Omitted.)

Upon Motion of the Defendants-Appellants, Irma Henry Gomez alias Irma Henry and Gabriel Gomez, good cause appearing therefor, it is

Ordered that the time for filing and docketing the records on appeal in the Court of Appeals for the Fifth Circuit in the appeal taken by the Defendant-Appellant Irma Henry Gomez and styled "Irma Henry Gomez vs. United States of America, No. ....." and in the appeal taken by the Defendant-Appellant Gabriel Gomez and styled "Gabriel Gomez vs. United States of America, No. .....", be and it is hereby extended to and including the 1st day of September, 1956.

Done and Ordered in Chambers, Federal Building, Miami, Florida, this 19th day of July, 1956.

EMETT C. CHOATE,
District Judge.

The Undersigned does not object to the entry of the above and foregoing Order.

United States Attorney, Southern District of Florida,

By (S.) J. EDWARD WORTON,
Assistant U. S. Attorney.

United States of America,
Southern District of Florida. ss.

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 99, inclusive, contain a true, full and complete copy of all such portions of the record, proceedings, and evidence in cause styled Gabriel Gomez versus United States of America, number 8162-Miami-Criminal, as appear upon the records and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, on this the 22nd day of August, A. D. 1956.

JULIAN A. BLAKE,
As Clerk of the United States
District Court in and for the
Southern District of Florida,
By EARLE F. SPRIGG,
(Seal) Chief Deputy Clerk.

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FILED
AUG 21 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

No. 393

GABRIEL GOMEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

LOUIS A. SABATINO
Attorney for Petitioner
923 duPont Building
Miami 32, Florida

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IN THE

SUPREME COURT OF THE UNITED STATES

No. ———

GABRIEL GOMEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

REVIEW SOUGHT

Gabriel Gomez, the petitioner, submits this, his petition for writ of certiorari to the Honorable Supreme Court of the United States and prays that the judgment of conviction, and sentence entered on a jury verdict against him, which was affirmed on appeal by the United States Court of Appeals for the Fifth Circuit, on June 24, 1957, Case No. 16,063, be reviewed and that the writ herein prayed for be granted.

JURISDICTION

It is respectfully submitted that the judgment of the United States Court of Appeals for the Fifth Circuit, rendered June 24, 1957, Case No. 16,063, should be reviewed by this Honorable Court in that said judgment is in conflict with another decision rendered by another Court of Appeals on the same matter, that is, District of Columbia v. Hunt, 163 F. 2d 833; in addition, the judgment here sought to be reviewed does not appear to be in accord with decisions of this court on the same matter, that is, the cases of McElroy, et al v. United States, 164 U.S. 76, 17 S. Ct. 31, 41 L. Ed. 355, and Kotteakos v. United States, 328 U.S. 750, 66 S. Ct. 1239, 90 L. Ed. 355.

QUESTION PRESENTED FOR REVIEW

The case here sought to be reviewed was tried in the United States District Court for the Southern District of Florida, Miami Division, where it was known as:

8162-M-Cr.

United States of America

versus

Alberto L. Arango; Joa O. Antonio Fares, alias Joa Fares, alias Joe Fares; Carlos B. Fernandez; Gabriel Gomez; Mario Gomez; Samuel Gomez; Irma Henry Gomez, alias Irma Henry; Mario Martinez; Raul I. Martinez; Eugenio C. Ponce; Humberto Recio; John Sese and Domingo Zabalgogezcoa, alias Domingo Zabal.

The case here sought to be reviewed in said District Court together with two other cases which in the trial court were known as:

8227-M-Cr.

United States of America

versus

Alberto L. Arango; Raul I. Martinez and John Basmajian

8249-M-Cr.

United States of America

versus

Alberto L. Arango; Raul L. Martinez, Gabriel Gomez and John Edward Schultz.

Note: Petitioner, Gabriel Gomez, was dismissed from cause 8249-M-Cr. fourteen (14) months before trial.

The case here sought to be reviewed is one of conspiracy wherein the defendants, among them the petitioner, were charged as *teachers*, and one of them, Alberto L. Arango, as manager of the Berlitz Schools, having conspired to defraud the United States by claiming money from the United States for lessons in a foreign language taught students under what is commonly known as the G. I. Bill and which lessons in a foreign language were not actually taught to students by the defendant teachers.

The other two cases above mentioned (8227-M-Cr. and

8249-M-Cr.) which were consolidated by the trial court and tried together with the case here sought to be reviewed, were cases of conspiracy wherein the defendants were charged as *students*, and one of them, Alberto L. Arango, as manager of the Berlitz Schools, having conspired to defraud the United States by claiming money from the United States for having received lessons in a foreign language taught them by teachers of the Berlitz Schools under what is commonly known as the G. I. Bill and which lessons in a foreign language were not actually received by the defendant students.

The petitioner was not a defendant in either of said two last mentioned cases, the latter of said two cases (8249-M-Cr.) was dismissed as to the petitioner fourteen (14) months prior to the consolidated trial, (R-71-72).

The indictment in each of the three cases describes a different conspiracy occasioned during three different periods of time:

Case 7162 — from July 1, 1948 to April 1, 1951.

Case 8227 — from December 5, 1950 to February 15, 1951.

Case 8249 — from July 4, 1950 to February 15, 1951.

The petitioner objected in open court (R-112) to the consolidation of these three cases, which objection was overruled.

In the interests of clarity thoughout this brief, the petitioner will refer to the two cases last above mentioned

(8227-M-Cr. and 8249-M-Cr.) as *"the students' cases"* and to the case here sought to be reviewed as *"the teachers' case"* because the position is taken that the conspiracies in question are two separate and distinct conspiracies — the matter of consolidating the students' cases will not be mentioned in this brief, it being of no concern of the petitioner.

Note: Please see Supplemental Record for indictments in "the students' cases".

Thus the question here presented is:

Did the trial court err in consolidating for trial "the teachers' case", 8162-M-Cr. and the two "students' cases", 8227-M-Cr. and 8249-M-Cr.?

THIS CASE INVOLVES RULE 13 OF CRIMINAL PROCEDURE

Rule 13 of Criminal Procedure is verbatim as follows:

"The Court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information."

FACTS MATERIAL TO CONSIDERATION OF QUESTION PRESENTED

The petitioner contends that he was prejudiced at the trial in view of the consolidation for trial of "the teachers' case", No. 8162-M-Cr. and "the two students' cases No.

8227-M-Cr. and 8249-M-Cr., because only the defendant Arango was a defendant in all three cases while the petitioner (Gomez) was a defendant in only one case; moreover, each of the three cases charged different defendants (except for Arango), all of which offenses and all of which defendants could not have been joined in a single indictment.

In addition, neither the Government nor anyone else moved the court to consolidate the trial cases, 8162, 8227 and 8249; the Government's motion was to consolidate other cases, see Clerk's certification to this effect, (R-72-73).

The court did not enter a formal written order on the matter of consolidation of any of the cases in question but merely entered a verbal order in open court consolidating the cases here complained of; please see the recitation at the bottom of page 70 of the record and also R-112, at the latter point in the record, the petitioner objected in open court prior to the trial of "the teachers' case" 8162-M-Cr. to the consolidation of that case with the other two cases here complained of.

The court's attention is invited to the fact that the Government's motion to consolidate informations and indictments (R-72-73), which motion speaks of cases concerning persons who are also named in the various counts constituting the overt acts to the conspiracy in case 8162 here sought to be reviewed and the Government in this motion represented to the trial court that the defendants in the cases sought to be consolidated with the case here sought to be reviewed could all have been named in the same indictment; that all of the offenses charged were of

the same or similar character, and were based on the same acts or transactions constituting part of a common scheme or plan — therefore, those cases might have been consolidated by the trial court upon the representation made by the United States Attorney in the aforesaid motion but the cases that were actually consolidated for trial and actually tried together were not mentioned in the aforesaid motion and no representation by any attorney or officer of the court was made to the trial court suggesting that such consolidation was proper. Certainly the trial court is presumed not to know who could have been named in which indictment or whether the acts or transactions involved in any of the cases were of similar character or constituted part of a common scheme or that the same proof applied to all cases — otherwise the trial judge might be subject to disqualification for having knowledge and knowing of the facts of the case prior to the trial, therefore, it is submitted that the consolidation for trial complained of was without basis.

The appellate court, among other things, in its decision here sought to be reviewed, stated, on page 4 hereof, that the transcript of testimony containing the testimony of four witnesses who were called to testify in the students' cases were witnesses whose testimony would have been admissible in the trial which involved the petitioner, however, the appellate court did not pass upon the matter as to whether or not the testimony of these witnesses prejudiced the petitioner. It is contended here that not only the very consolidation of these cases prejudiced the petitioner but also the fact that witnesses who were testifying about other cases and mentioned the petitioner in connection with defendants who were being tried in other cases did, in fact, prejudice the petitioner because, if nothing else, this testi-

mony alluded "association" of the petitioner with defendants that four witnesses were brought to testify by the Government for the express purpose of showing the guilt of the student-defendants.

Note: Please see Supplemental Record containing testimony of the above mentioned four witnesses.

ARGUMENT OF REASONS RELIED ON FOR ALLOWANCE OF WRIT:

The writer has found many cases in his research touching on the matter of improper consolidation for trial, however, the most authoritative of these cases are only three, viz: McElroy, et al v. United States, 164 U. S. 76, 17 S. Ct. 31, 41 L. Ed. 355; District of Columbia v. Hunt, 163 F. 2d 833, and Kotteakos v. United States, 328 U. S. 750, 66 S. Ct. 1239, 90 L. Ed. 355, which cases the writer will refer to as the McElroy case, the Hunt case and the Kotteakos case.

The McElroy case was one where six defendants were indicted for assault with intent to kill one Elizabeth Miller on April 16, 1894; they were also charged in another indictment for assault with intent to kill one Sherman Miller on the same day and they were further charged in still another indictment for arson of the dwelling house of one Eugene Miller on May 1, 1394. Three of the original six defendants were, in addition, indicted for the arson of the dwelling on one Bruce Miller on April 16, 1894. The trial court consolidated all four indictments for trial and each defendant objected.

The Supreme Court of the United States was here

faced with the question as to whether or not offenses claimed to have been committed by all defendants at one time could be joined with another and distinct offense committed by part of them at a different time. This proposition the Supreme Court of the United States resolved in the negative.

The court said:

"**** The record also discloses that there was no evidence offered tending to show that there had been or was a conspiracy between defendants, or them and other parties, to commit the alleged crimes.

The several charges in the four indictments were not against the same persons, nor were they for the same act or transaction, nor for two or more acts or transactions connected together; and, in our opinion, they were not for two or more acts or transactions of the same class of crimes or offenses which might be properly joined, because they were substantive offenses, separate and distinct, complete in themselves, and independent of each other, committed at different times, and not provable by the same evidence. In cases of felony, the multiplication of distinct charges has been considered so objectionable as tending to confound the accused in his defense, or to prejudice him as to his challenge in the matter of being held out to be habitually criminal, in the distraction of the attention of the jury or otherwise, that it is the settled rule in England and in many of our states to confine the indictment to one distinct offense, or restrict the evidence to one transaction. **** Necessarily, where the accused is deprived of a substantial right by the action of the trial court, such action, having been properly objected to, is revisable on error.

It is clear that the statute does not authorize the consolidation of indictments in such a way that some of the defendants may be tried at the same time with other defendants charged with a crime different from that for which all are tried. And, even if the defendants are the same in all the indictments consolidated, we do not think the statute authorizes the joinder of distinct felonies, not provable by the same evidence, and in no sense resulting from the same series of acts. **** While the general rule is that counts for several felonies of the same general nature, requiring the same mode of trial and punishment, may be joined in the same indictment, subject to the power of the court to quash the indictment or to compel an election, such joinder cannot be sustained where the parties are not the same, and where the offenses are in no wise parts of the same transactions, and must depend upon evidence of a different state of facts as to each or some of them. It cannot be said in such case that all the defendants may not have been embarrassed and prejudiced in their defense, or that the attention of the jury may not have been distracted to their injury in passing upon distinct and independent transactions. The order of consolidation was not authorized by statute and did not rest in mere discretion.

Judgment reversed as to all the defendants, and cause remanded, with directions to grant a new trial, and for further proceedings in conformity with this opinion."

The trial court in the case here sought to be reviewed consolidated the indictments in question claiming authority under Federal Rules of Criminal Procedure, Rule 13, which is as follows:

"The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The proceedure shall be the same as if the prosecution were under such single indictment or information."

The court's attention is invited to the Notes of Advisory Committee on Rules which appears in 18 USCA under Rule 13, at page 211, which states that Rule 13 is substantially a restatement of existing law, that is former Section 557 of 18 USCA, (Rev. Stat. 1878, Sec. 1024). This is mentioned as the McElroy case was decided on the old law which actually was substantially the same as our present Rule 13.

The Hunt case was one which originated in the District of Columbia where three defendants were charged with vagrancy alleged to have been committed on three separate dates. On motion of the prosecution, the cases were consolidated but all three objected to the consolidation.

The rule of procedure under which the consolidation was effected is Rule 5, Rules Regulating Practice before the Criminal Division of the Municipal Court for the District of Columbia, October 2, 1944, which is identical to Rule 13 of the Federal Rules of Criminal Procedure. The District of Columbia Rule reads as follows:

"(b) Trial Together of Informations: The Court may order two or more informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single information. The pro-

cedure shall be the same as if the prosecution were under such single information."

The United States Court of Appeals for the District of Columbia was faced with the proposition as to whether or not the consolidation of three informations, each against different defendants, each charging the same crime but occurring on three separate dates, was a proper consolidation. This proposition the court resolved in the negative. The court said:

"Under the plain words of the rule consolidation of two or more informations for trial is conditioned upon the possibility of joinder of the offenses and of the defendants in a single information; and such joinder is permitted only if the defendants are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.****

****The appellant urges that the question of consolidation is within the discretion of the trial judge and that no abuse is shown. This ignores the clear terms of the rule making consolidation of informations for trial dependent upon the possibility of joinder, and making joinder dependent upon allegations that the defendants separately charged participated in the "same act or transaction or in the same series of acts or transactions." If these conditions are fulfilled, there is a discretion, i.e., then the trial judge "may" consolidate the informations for trial, although he is not required to do so. But if, as an instant case, the acts or transactions in which the several defendants are alleged to have participated are not the same, then, the condition for joinder being unfulfilled, there is no discretion with respect to consolidation.****

****But erroneous denial of a separate trial cannot be classed as merely technical. The right not to be tried with another or others in whose cases the evidence would relate to a distinct, even though similar, act than that in which a defendant is alleged to have participated, is a substantial procedural right. It is a fundamental of our system of law that one person shall not be held criminally responsible for the independent act of another. And the fate, in a consolidated trial, of one defendant can hardly be unaffected by evidence relating to the acts of others.****"

The court's attention is again invited to the fact that in the case here sought to be reviewed, a conspiracy was consolidated with two other cases and all three consitute three different and separate conspiracies, each commencing on a separate date and not all terminating on the same date. It is perhaps true that each conspiracy constituted a scheme to fraudulently extract money from the Government — this is the only similarity between them but as for the personalities involved, they are not the same, nor were the times when the conspiracies were to have been in effect, nor was the modus operandi the same in that in one conspiracy, the teachers and the manager of a school, by their scheme, sought to defraud the Government during one period of time and each of the other two cases different groups of students conspired with the same manager of a school during two separate periods of time to defraud the Government.

The situation stated above seems parallel to the condition which existed in the Kotteakos case. The situation there was whether the petitioners (appellants) had suffered substantial prejudice from being convicted of a single general conspiracy by evidence which the Government

proved not just one conspiracy but some eight or more different ones of the same sort executed through a common key figure, Simon Brown.

In the case here sought to be reviewed, the same situation existed and the "common key figure" was Alberto L. Arango, defendant in each of the cases consolidated for trial, he having been the manager of the school in question.

In the Kotteakos case, the court said:

"Here toleration went too far. We do not think that either Congress, when it enacted Sec. 269 or this court, when deciding the Berger case, intended to authorize the Government to string together, for common trial, eight or more separate and distinct crimes, conspiracies related in kind though they might be, when the only nexus among them lies in the fact that one man participated in all. Leeway there must be for such cases as the Berger situation and for others where proof may not accord with exact specifications in indictments. Otherwise criminal conspirators never could be brought to halt. But if the practice here followed were to stand, we see nothing to prevent its extension to a dozen, a score, or more conspiracies and at the same time to scores of men involved, if at all, only separately in them. The dangers for transference of guilt from one to another across the line separating conspiracies, subconsciously or otherwise, are so great that no one really can say prejudice to substantial right has not taken place. Section 269 had no purpose to go so far. The line must be drawn somewhere. Whether or not Berger marks the limit, for this sort of error and case, we are clear that it must lie somewhere between that case and this one.

In so ruling we are not unmindful, as the Court of Appeals has held more than once, that the problem is not merely one of variance between indictment and proof or of the right application of the policy of Sec. 269 for freedom of judgment, but is also essentially one of proper joinder under Sec. 557 of the Criminal Code. When we look at that section's requirement for separate statement in different counts of related but distinct "acts or transactions of the same class of crimes or defenses, which may be properly joined, instead of having several indictments, "our conclusion is reinforced."

CONCLUSION

This petition for writ of certiorari is therefore respectfully submitted to the Honorable Supreme Court of the United States for its consideration and the petitioner respectfuuly prays that said writ be granted and that the judgment of the United States Court of Appeals for the Fifth Circuit be reviewed.

Respectfully submitted,

LOUIS A. SABATINO
Attorney for Petitioner
923 duPont Building
Miami 32, Florida

APPENDIX A

JUDGMENT.

Extract from the Minutes of June 24, 1957.

GABRIEL GOMEZ,

No. 16063 versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

APPENDIX B

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 16063

GABRIEL GOMEZ,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(June 24, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a conviction of appellant on several counts of an indictment charging a conspiracy to defraud and substantive acts of defrauding the United States by claiming money from the

United States for lessons in a foreign language taught students under what is commonly known as the G.I. Bill.

The principal basis for the appeal is the action of the trial court in consolidating for trial two other indictments involving other acts and other actors in addition to one central figure who was named in all three indictments.

There was ample evidence to support the Government's charge that at the Miami branch of a foreign language school there had been widespread participation by manager, assistant manager, teachers and students in a scheme to overstate to the Veterans Administration the actual number of hours of teaching and the numbers of students enrolled and numbers of hours of instruction received by individual students. The fruits of such a scheme were many fold. Managers of the school would receive compensation they were not entitled to, as well as kickbacks from teachers who participated in the fraud; the teachers would be paid for work not done and students would receive subsistence allowances they were not entitled to.

The particular indictment on which appellant was tried was based on his actions as a teacher in participating with the manager, Arango, and others in causing the false records to be prepared for submission to the Veterans Administration. The indictment charged many instances of naming certain students or fictitious students in whose names falsified attendance slips were made up.

The two other indictments, whose consolidation with the one naming Gomez is the principal basis of Gomez's appeal, each charged Arango and others (but not Gomez)

with conspiring with a certain named student to cause him to falsify his attendance records as a result of which the student was paid by the Government certain sums for subsistence which he was not entitled to receive.

Appellant strongly urges that it was prejudicial error for the trial court to consolidate for trial the three indictments, in two of which he was not named as a defendant. He says that the accumulation of evidence in the two cases in which he was not a defendant prejudiced his defense in the case in which he was responding because of the danger of identifying him with acts proven against the others.

The rule of procedure under which the trial court acted, and which the Government here contends supports its action, provides:

> "The court may order two or more indictments or information or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information." 18 U.S.C.A., Rule 13.

It thus becomes necessary for us to determine whether the charges against Arango and the students could have been included as counts of the indictment against Arango and the teachers.

In the nature of the indictment against appellant there were three groups involved; the school manage-

ment, the teachers and the students whose instruction was the thing actually paid for by the Government. Whenever a student claimed hours of instruction that he didn't receive this could be calculated to defraud the Government in two ways; first by padding the demand for tuition, and second by increasing the amount of subsistence. Clearly the connivances of the three groups would be helpful if not necessary for the successful operation of the scheme. The management could not safely claim excessive numbers of hours taught without cooperation of the teachers who certified to the false reports, and they could not safely make false reports of hours taught without cooperation of some of the students who were reported as the ultimate recipients of the fictitious periods of instruction.

Appellant has brought up to us the transcript of testimony of four witnesses who he says were called to testify in the cases of the student indictments. The caption shows that their testimony was in the case in which Gomez was on trial. However, assuming that they testified only in the other two trials that were consolidated with Gomez's trial, we find nothing in this testimony that would not have been admissible on the main trial. All four of the witnesses mentioned Gomez as a teacher or as being connected with the school. One of them testified that Gomez solicited the students' enrollment. All of their testimony related to the actual hours of instruction, and it was relevant to the Government's contention that the reports were padded.

We conclude that the charges against the students and management might well have been included in the indictment against the teachers and management.

Nothing in the Supreme Court's decision in *Kotteakos v. United States*, 328 U.S. 750, throws any light on our problem here. In the Kotteakos case the court held that whereas one conspiracy was charged involving many different acts, there were in fact eight different conspiracies. Here we say only that the charges of all three conspiracies could well have been included in a single indictment and the proof adduced as against the students could have been introduced against Gomez and his fellow conspirators on the teacher indictment if it had been tried separately. As was true in *United States v. Samuel Dunkel & Co., et al* (2 Cir.), 184 F. 2d 894, pursuant to the purpose alleged in the Gomez indictment different persons who participated in the conspiracy (here broken into three indictments) obtained and presented false claims to the Government. We think that, under the ruling of this Court in *Kivette v. United States* (5 Cir.), 230 F. 2d 749, the two indictments that were consolidated with the Gomez or "teacher" indictment could well have been made the basis of separate counts in the latter, and thus rule 13 is satisfied.

The only other basis for appeal asserted by appellant is that one of the jurors who heard the case was not a qualified juror under the Florida statutes. This is asserted to be so because the juror had lost his qualification as an elector and was not reinstated as an elector until after the trial started. Appellant cites no federal or Florida authority applicable to this situation. We think the contention is completely answered in *Ford v. United States* (5 Cir.), 201 F. 2d 300, where we said:

> ". . . . Where the objection to a juror relates, not to actual prejudice or other fundamental incompetence, but to a statutory disqualification only,

such disqualification is ordinarily waived by failure to assert it until after verdict, even though the facts which constitute the disqualification were not previously known to the defendants. The objection based upon the previous felony convictions comes too late after verdict, no actual bias or prejudice being shown. Spivey v. U.S., 5 Cir., 109 F. 2d 181, text 186; Strang v. U.S., 5 Cir., 53 F. 2d 820; Roush v. U.S., 5 Cir., 47 F. 2d 444; Bush v. U.S., 5 Cir., 16 F. 2d 709; Kohl v. Lehlback, 160 U.S. 293, text 302, 16 S. Ct. 304, 40 L.Ed. 432, tex 435; Raub v. Carpenter, 187 U.S. 159, 23 S.Ct. 72, 47 L.Ed. 119; Frazier v. U.S., 335 U.S. 497, tex 513, 69 S.Ct. 201, 93 L.Ed. 187, text 199; Morton v. Welch, 4 Cir., 162 F. 2d 840; Queenan v. Territory of Oklahoma, 190 U.S. 548, 23 S.Ct. 762, 47 L.Ed. 1175."

Concluding as we do that the trial court did not abuse his discretion in consolidating the three cases for trial and that there is no merit in the second ground of error relied upon, the judgment must be AFFIRMED.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana

(SEAL)

I HEREBY CERTIFY that a true copy of the foregoing petition was air-mailed to the Solicitor General, Department of Justice, Washington 25, D. C., on the _____day of August, 1957.

LOUIS A. SABATINO

I HEREBY CERTIFY that a true copy of the foregoing petition was mailed to the office of the United States Attorney, Federal Building, Miami, Florida, on the _____day of August, 1957.

LOUIS A. SABATINO

FILED
SEP 11 1957
JOHN T. FEY, Clerk

No. 393

In the Supreme Court of the United States

OCTOBER TERM, 1957

GABRIEL GOMEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General,
BEATRICE ROSENBERG,
Attorney,
Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

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GABRIEL GOMEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. B17) is reported at 245 F. 2d 344.

JURISDICTION

The judgment of the Court of Appeals was entered June 24, 1957 (Pet. App. A16). The time to file a petition for a writ of certiorari was extended until August 23, 1957. The petition for a writ of certiorari was filed on August 21, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether it was proper to consolidate for trial an indictment charging a conspiracy, among the man-

agers and teachers (of whom petitioner was one) of a school, to defraud the United States in relation to hours of instruction to veterans with two separate indictments charging the managers and two different students with conspiracy to defraud in relation to the instruction received.

RULES INVOLVED

Rule 8, F. R. Crim. P.:

> (a) *Joinder of Offenses.*
>
> Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.
>
> (b) *Joinder of Defendants.*
>
> Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 13, F. R. Crim. P.:

> The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecu-

tion were under such single indictment or information.

STATEMENT

An indictment returned against petitioner and others in the United States District Court for the Southern District of Florida charged them with conspiring, from July, 1948 to April, 1951, to defraud the United States with relation to benefits for veterans in connection with a branch of the Berlitz School of Languages. The charge was that the manager of the school, Arango, and various teachers, of whom petitioner was one, falsely claimed that students had been given more supplies and had been taught more hours than had occurred (R. 1–15). Among the overt acts charged were several relating to requests by the manager that students sign false attendance slips (R. 11–13).

The indictment also contained a number of substantive counts charging the manager Arango and various other of the defendants with presenting false claims as to particular students. Counts 25–29 named petitioner, together with Arango and others. Petitioner was convicted on the conspiracy count and two substantive counts (25 and 26).[1] He was sentenced to imprisonment for fifteen months and fined $3,000 on the conspiracy count, and given additional punishment of $500 fine on each of the substantive counts (R. 82–83). On appeal, the conviction was affirmed.

Petitioner, another teacher, and Arango were tried

[1] Count 27 was dismissed. Judgment was arrested on counts 28 and 29 on the ground that the statute of limitations had run (R. 86–87).

together. Before trial, the cause was, over petitioner's objection, consolidated with two other indictments each of which named Arango, Martinez (not tried), and a particular student, charging them with conspiracy to commit frauds with relation to the number of hours of instruction (R. 121–127). The two consolidated indictments were dismissed by the trial judge before the case went to the jury (R. 95).

ARGUMENT

Petitioner's claim of prejudicial error in the consolidation of his trial with the two conspiracy counts (ultimately dismissed), naming management and two students, is without merit. The separate indictments with respect to the two students alleged the same general conspiracy relating to the Berlitz school within the period charged in the main conspiracy count naming petitioner. The activities with respect to the particular students were overt acts in furtherance of the general conspiracy which petitioner joined. Since he joined and furthered the general scheme, aware that he was part of a larger plan, he could properly be held a party to the general conspiracy even if he did not participate in every one of its ramifications. *Blumenthal* v. *United States,* 332 U. S. 539, 559.

As the court below pointed out, the cooperation of management, teachers, and students was necessary for the scheme to work successfully. Indeed, the groups were so interrelated that all could properly have been charged as part of one conspiracy. *Blumenthal* v. *United States, supra.* The danger of confusion was lessened by separating the indictment against management and teachers from those involving manage-

ment and students. But when it was discovered that only a limited number of persons were going to trial, it was proper to try together indictments growing out of this unified scheme. The offenses were in terms of Rule 8, F. R. Crim. P. "of the same or similar character" and were "acts or transactions connected together" as well as "parts of a common scheme or plan." Since joinder of counts would have been proper under Rule 8, a joint trial was proper under Rule 13.

The transcript of the testimony of four witnesses, which petitioner has included in the record, far from showing prejudice, serves to emphasize the absence of prejudice. Two of the witnesses, the Secretary Registrar of the school (Tr. 3–34) and a former teacher (Tr. 63 ff.), gave testimony, which, while not relating to acts by petitioner, did relate to the general scheme charged in the indictment naming petitioner. The third witness testified concerning admissions by a student, Schultz, named in one of the consolidated indictments (Tr. 34–54). Presumably that testimony fell with dismissal of the Schultz indictment. The fourth witness testified that, while he himself took lessons at his store from petitioner, Schultz, who worked at the same place, did not take lessons there (Tr. 55–63). Although the testimony with respect to Schultz with whom petitioner was involved related to a period which was barred as to the substantive offense by the statute of limitations,[2] it was relevant with respect to

[2] Substantive count 27 had named petitioner as a defendant and charged false claims with respect to Schultz (R. 54–55). That count was not submitted to the jury.

the continuing conspiracy in which petitioner was implicated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

SEPTEMBER, 1957.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 393

GABRIEL GOMEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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IN THE

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No. 393

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Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES

REHEARING SOUGHT

Gabriel Gomez, the petitioner, submits this his petition for rehearing of order denying petition for writ of certiorari entered October 28, 1957, and requests this Honorable Court, in accordance with its Rule 58 (2), to consider that which the petitioner feels is a substantial ground available to the petitioner although not previously presented in the petition for writ of certiorari heretofore

filed herein. (Counsel's certificate of good faith appears at end of this petition.)

ARGUMENT

At the trial, particularly on voir dire, the juror, Charles North, was administered the following oath, (R-111):

> "You and each of you do solemnly swear that you will true answer make to all such questions as may be propounded to you touching upon your qualifications to serve as petit jurors in this Court. So help you God."

Following the administration of the above oath, the Juror, Charles North, answered in the affirmative to the question, (R-111):

> "Are you a duly qualified elector in the County from which you are summoned?"

It is the appellant's contention that the juror, Charles North, was not qualified to hear the case on review when it was tried in the court below, because he was not a qualified elector in the county from which he was summoned, which was discovered after trial.

The petitioner submits that the petit juror, Charles North, was not a qualified juror and even though this was discovered after the verdict, a new trial should have been granted because his disqualification was not one which might have been discovered by routine questioning of jurors on voir dire since the juror in question was asked by the Clerk of the Court, under oath:

"Are you a duly qualified elector in the County from which you are summoned?"

To the above question, the juror, Charles North, answered in the affirmative (R-111).

Therefore, the petitioner contends that since this question was asked by the Clerk of the Court and the juror answered the same under oath, the petitioner had a right to rely upon that answer and that this juror knew what consitutes, "a qualified jurror", and was not required to make further investigation and object prior or during the trial but that objection after trial in view of the circumstances was sufficient.

Title 28 USCA, Section 1861 (4) states, among other things, that a person is competent to serve as a grand or petit juror unless he is incompetent to serve as a grand or petit juror by the laws of the state in which the District Court is held.

The law of the State of Florida, F.S.A. 40.01 (1), Laws of 1951, requires, among other things, that a juror be a person who is a duly qualified elector in his county.

The juror, Charles North, was not a duly qualified elector in Dade County, Florida, in that he was purged from the jury list of Dade County, Florida, in 1955 by reason of his not having been a qualified elector (R-79) and remained purged as aforesaid until Friday, March 15, 1956 when he re-registered with the Supervisor of Registration, Dade County, Florida, (R-78). The trial of the foregoing case commenced on March 12, 1956, and a verict was returned on March 19, 1956 (R-74) (filed on

March 20, 1956), therefore, this juror was not qualified during all of the time that he served on said jury.

The petitioner and his defense counsel, having had no choice but to rely upon the sworn answer of the juror, Charles North, given by him on voir dire, were precluded from exercising a challenge for cause. The undersigned, who was petitioner's defense counsel at the trial, *again certifies by his signature below*, that the disqualification of the juror, Charles North, here complained of, was not discovered until after trial, in fact, three days later, March 23, 1956, (R-80-81).

The writer has searched the cases touching on the matter of objecting to a juror's qualifications after verdict; most of the cases found hold that objection after verdict comes too late However, all of these cases are cases where the defendant could have found the particular point of disqualification of the juror had he inquired of him or challenged him for cause on voir dire but did not do so. In the case here on review, the inquiry was made and the answer was given under oath, thus the petitioner was within his rights to rely upon such sworn answer, that is, that the juror was a qualified elector in the county from which he was summoned. It would seem unreasonable that a defendant be put in a position of having to verify answers given under oath by a juror. If such were the requirement of a defendant then the practice in our courts would be to adjourn for a day or two after voir dire so that the defendant may be afforded an opportunity to verify answers given under oath by jurors.

From the case submitted below, it seems that the petitioner's contention in this regard is with merit and has been sustained by various state courts.

STATE v. GUYNN
48 P. 2d. 902

In the Guynn case, a juror was asked if he had been a deputy sheriff during a certain strike; the case on trial was one of a charge of riot during a certain strike, the juror answered in the negative and after verdict, it was discovered that in fact he had been a deputy sheriff during the strike in question. The Supreme Court of Utah, in reversing the judgment of conviction said:

> "The incompetency of a juror is ground for a new trial, when discovered after verdict, where he denied the ground of his incompetency on his voir dire examination."

STATE v. ELLIOTT
168 S.E. 546

In the Elliott case, the defendant claimed after trial that one of the jurors was not a resident of the county (Horry county) from which he was summoned, and according to the law, a juror was to have been a resident of the county from which he was summoned. The prosecution insisted that the defendant did not use due diligence to ascertain prior to the verdict as to whether or not the juror was a resident of the county in question and therefore could not complain after verdict. The court's attention is invited in the Elliott case the inquiry was not made of the juror himself but of the clerk of the trial court and the Supreme Court of South Carolina stated, in reversing the conviction and remanding the case for a new trial that the defendant had a right to rely upon that which was told to him by the clerk of the trial court from whom the information was sought. The court said:

"He sought information of the man who was, probably, better qualified to give it than any man in the country, viz, the clerk of the court, who is ex officio member of the board of jury commissioners, and participated in the drawing of this very jury. It appears by his affidavit that he knew that Sarvis was a duly appointed constable but that he did not apprise counsel of that fact. On the contrary, he assured him that Sarvis was a farmer, a good substantial man, and would make a good juror. It is urged in argument that Sarvis was a bonded constable, whose bond was on file in the clerk's office and that counsel, with the exercise of due diligence, would have ascertained this fact. This is enforcing the requirement of due diligence with too great harshness. There was literally nothing to suggest to counsel that one of the prospective jurors might be a bonded officer of the law. He had every right to rely upon the presumption that the officers who drew the jury knew their duty and did it. He went to the highest authority from which to gain information of the men who composed the venire. It appears to me that counsel showed unusual diligence in the effort to ascertain all about the jurors. This court is disposed to apply the rule of due diligence with more leniency where human life is concerned."

STATE v. TART
155 S.E. 609

The claim in the Tart case was a follows: One of the jurors, a certain W. H. Patterson, who was sworn and

impanelled to try the case, was asked if he was related to the prosecutrix within the seventh degree. The defense counsel asked:

> "If there is any member of the jury related to the prosecutrix by blood or marriage, please let that fact be known and excuse himself."

To this question, the juror Patterson made no reply. After verdict, it was discovered that Patterson was related to the prosecutrix. The record also shows that Patterson discovered this relationship before any evidence was introduced and wanted to disclose this fact to the court but was advised not to do so. The trial court denied a motion for a new trial and determined that the defendant was not prejudiced by this juror serving.

In reversing the trial court and remanding the case for a new trial, the Supreme Court of North Carolina determined that the defendant was deprived of his right to challenge this juror, if he so desired.

The court also stated that whether or not the juror actually yielded to his passion and prejudice, was not the point. The point was that the potential bias which the law condemned was present and that the defendant, through no fault of his own, was prevented from discovering its evidence.

The court's attention is invited to the fact that the juror, Charles North, in the case here on review, must have found that he was not a qualified elector since during the course of the trial, March 16, 1956, he re-registered (R-78-79), but did not disclose this fact.

REESON v. STATE
173 P. 1033

Here the Criminal Court of Appeals of Oklahoma determined that a new trial should be granted where it is discovered after verdict that a juror did not disclose on his voir dire that he was a sheriff's deputy—the Oklahoma code requires jurors have the qualifications of electors, be of good moral character and not be judges, sheriffs or deputy sheriffs, constables and etcetera.

The appellate court said:

> "Here the record shows that the juror Day on his voir dire qualified as a juror by his answers to questions by the court and by counsel. Appellant was not bound to anticipate that talesmen *would be called from among the sheriff's deputies*, and the juror Day should have disclosed the relationship on the general examination as to his competency."

BOREN v. STATE
4 S.W. 463

The Boren case, which originated in Texas, was one where one of the jurors that tried the case on voir dire examination by the court, stated that he was a freeholder in the county wherein the trial was held. After trial, it was discovered that this juror was neither a freeholder in the state nor a householder in the county. Following this discovery, a motion for new trial was made and denied. In reversing the judgment of conviction and remanding the cause for a new trial, the Court of Appeals of Texas said:

"We are of the opinion that the new trial should have been granted on this ground. Our statute provides that, 'All male persons over twenty-one years of age are competent jurors unless disqualified under some provision of this chapter'. The second ground of disqualification is that the juror is not a freeholder in the state, or householder in the county. It appears from the record that the court tested the qualification of the juror under the law and that the juror qualified himself by answering that he was a freeholder. The appellant and his counsel make oath that his disqualification was not known to them until after trial. There is no evidence that they, or either of them did, except that which might be supposed to arise from the fact that they had intimately known the juror Horsford for years previously. This is not such proof, if it be proof at all, as will prevail over the oaths of appellant and his counsel that the disqualification was not known to them until after trial."

LAMPHIER v. THE STATE
70, Indiana Reports 317

In the State of Indiana at the time the Lamphier case was tried, the law required a juror to be a voter and, in addition, a freeholder or householder in the county from which he was summoned. One of the jurors qualified as such by answering questions on voir dire, which questions were answered under oath. After trial, it was discovered that this particular juror was a qualified voter but was neither a freeholder nor a householder. The trial court denied a motion for new trial wherein the incom-

petency of this juror was raised. In reviewing the judgment of conviction and remanding the cause for new trial, the Supreme Court of Indiana said:

> "The third cause assigned for a new trial was in substance this: That Samuel McIlroy, one of the jurors of the jury which tried this cause, was not a competent juror, under the law, in this, that he was neither a householder nor a freeholder of said Jennings county, at the time of his service as such juror. In section 1 of 'An act to prescribe the qualifications of petit jurors in the several courts of this State,' approved March 8th, 1873, which act was then and still is in force, it was and is provided 'That any person who is either a householder or freeholder and a qualified voter, in any county of this State, shall be qualified to serve as a petit juror in any court in such county in which such persons shall be such householder or freeholder and qualified voter.' Acts 1873, p. 159; 2 R. S. 1876, p. 31. It is clear, we think, from the record of this cause, that Samuel McIlroy, although a qualified voter, was neither a householder nor a freeholder of said Jennings county, and that he was not, therefore, under the law, a competent juror for the trial of this cause. Before the jury were sworn to try the cause, the record shows that the jurors, including said McIlroy, were severally examined on oath, under the direction of the court, in relation to their respective qualifications as such jurors, and especially as to whether or not they were either householders or freeholders of said Jennings County. It seems to us from our

examination of the record, that the answers of said McIlroy to the questions asked him, from his own mistaken views of his qualifications as a juror, were well calculated to and did mislead and deceive both the court and the counsel engaged in the trial of the cause. The appellant was entitled, under the law, to a trial of her cause by a jury of competent jurors. McIlroy was neither a householder nor a freeholder of said Jennings county, and therefore he was not a competent juror for the trial of this cause; but he was accepted as a juror by the appellant and her counsel, without fault or negligence on her or their part, and in ignorance at the time of his incompetency. All these facts are clearly and fairly shown by the record of this cause; and, therefore, we think it can not be correctly said, that the appellant waived her objection, or her right to object, to the competency of said McIlroy, as a juror, or that she consented to the trial of her cause by an incompetent juror. Rice v. The State, 16 Ind. 298; Croy v. The State, 32 Ind. 384; and Hudspeth v. Herston, 64 Ind. 133.

We are of the opinion, that this third cause for a new trial was well assigned, and that, for this cause, the appellant's motion therefor ought to have been granted."

LEACH v. STATE
18 So. 2d. 289

In the Leach case, the defendant asked the prospective jurors if any of them had been a deputy sheriff; two of

them answered in the affirmative and one, who had been, did not so answer. Whether he deliberately or intentionally so answered, the court said was unimportant. This fact was not discovered by the defendant until after verdict. The Court of Appeals of Alabama (18 So. 2d. 285) reversed the lower court and remanded the case for new trial and also denied a rehearing. The State, that is, the prosecution, petitioned for a writ of certiorari and the Supreme Court of Alabama, in denying the writ, said:

> "The fact was unknown to defendant or his counsel until after the trial. The question is one of diligence. Defendant did not personally ask the question as authorized by section 52, Title 30, supra. But the court yielded to defendant's request and did so. Defendant need not assume that had he propounded the question a different result would have been obtained. We agree with the Court of Appeals that although the juror was not disqualified, defendant had a right to have the question answered truly to enable him to exercise his discretion wisely in using his power to strike him without cause."

WHITE v. STATE
176 So. 842

In the White case, the juror was asked if he had ever been represented by any of the attorneys in the case, that is prosecution attorneys or defense attoreny. The juror answered in the negative. It was discovered that this juror had been a client of one of the attorneys representing the State. The Supreme Court of Florida, in reversing the judgment of conviction and remanding the cause for new trial, said:

"It, therefore, followed that when the attorney for one of the parties to a suit asks a proposed juror who is being examined upon his voir dire whether or not he is or has been represented by either of the attorneys appearing in the case, he is entitled to have a full, frank and truthful answer. If the venireman answers "yes", then the attorney propounding the question may go further for the purpose of determining whether or not that relationship is such as either to disqualify the venireman or as to make him so undesirable as a juror in the cause that the party represented by such attorney propounding the question may exercise his right of challenge of that juror. If the juror, by inadvertence or otherwise, answers the initial question falsely, he withholds from the attorney propounding the question and his client vital information.****

**** The record makes it clear that the untruthful answer made by the juror, as herein referred to, was with no intent to deceive counsel. It is also clear that the attorney who had represented the juror may have, for the moment, forgotten the incident and, therefore, did not correct the answer of the juror. That all this happened inadvertently cannot be said, however, to cure the error.****

**** Therefore, without attributing evil motives to the juror or to counsel, we must hold that the unfortunate incident was sufficient to require the granting of a new trial."

VIRGIL BEASLEY v. STATE
Court of Appeals of Alabama
(Decided August 13, 1957)
96 So. 2d. 693

In the Beasley case, on voir dire, the jurors were asked if any of them had been convicted of a crime involving moral turpitude. The juror Jenkins remained silent on the question and served as a petit juror. After trial, it was discovered that Jenkins had been involved in a crime involving moral turpitude, that is, adultery. The trial court denied a motion for new trial, however, on appeal, the appellate court reversed the trial court and remanded the case for new trial stating, among other things:

> "Ordinarily a man cannot be said to waive that which he does not know, or by the exercise of reasonable diligence cannot know, e.g. Bell v. Birmingham Broadcasting Co., 263 Ala. 355, 82 So. 2d 345. But waiver here applies to the rights of challenge which is a known legal right. This view of waiver makes critical the aspect of the case arising from Jenkins' failure to answer the trial judge's question pertinent to his conviction."

From the cases above submitted, it seems that the courts are not only concerned with whether or not the defendant was prejudiced due to a particular disqualification of a jury or a juror's possession of an element which might render him incapable of rendering a fair and impartial verdict but the courts seem to frown upon a juror that does not disclose the true facts concerning himself, whether intentionally or unintentionally, because no one knowns what election a defendant might make if jurors

answer questions correctly and truthfully. For example, in the White case above submitted, it is not logical to conclude that the juror who had been represented by one of the prosecution attorneys would be prejudiced against a defendant on trial—it was not the attorney that was on trial nor was the attorney a party litigant to the case, yet, the Supreme Court of Florida held that the mere failure to disclose a juror's past relationship of attorney and client between a prosecuting attorney and himself was sufficient to disqualify himself and to set aside the judgment of conviction it seems that the untrue and incorrect sworn answer of the juror, Charles North, in the case here on appeal should have the same effect.

To go even further, the Boren case and the Lamphier case concerned jurors who said they were freeholders or householders in the county from which they were summoned and it was discovered after trial they were not freeholders or householders—the question of whether or not the jurors in question were prejudiced against the defendants was not considered—the fact that these jurors did not qualify under the law and did not truthfully or correctly state their ownership of realty or a home in the county in question, which was not discovered until after trial, was sufficient to grant a new trial.

CONCLUSION

This petition for rehearing of order denying writ of certiorari is therefore respectfully submitted to the Honorable Supreme Court of the United States for its consideration and the petitioner respectfully prays that said writ be granted and that the judgment of the United States Court of Appeals for the Fifth Circuit be reviewed.

Respectfully submitted,

LOUIS A. SABATINO
Attorney for Petitioner
923 duPont Building
Miami 32, Florida

APPENDIX A

Florida Statutes Annotated

Chapter 40. JUROR AND JURY LISTS
Section 40.01:

"Qualification and disqualification

(1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties; provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list. ***"

APPENDIX B

JUDGMENT

Extract from the Minutes of June 24, 1957.

GABRIEL GOMEZ,

No. 16063 versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

APPENDIX C

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 16063

GABRIEL GOMEZ,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(June 24, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a conviction of appellant on several counts of an indictment charging a conspiracy to defraud and substantive acts of defrauding the United States by claiming money from the United States for lessons in a foreign language taught students under what is commonly known as the G.I. Bill.

The principal basis for the appeal is the action of the trial court in consolidating for trial two other indictments involving other acts and other actors in addition to one central figure who was named in all three indictments.

There was ample evidence to support the Government's charge that at the Miami branch of a foreign language school there had been widespread participation by manager, assistant manager, teachers and students in a scheme to overstate to the Veterans Administration the actual number of hours of teaching and the numbers of students enrolled and numbers of hours of instruction received by individual students. The fruits of such a scheme were many fold. Managers of the school would receive compensation they were not entitled to, as well as kickbacks from teachers who participated in the fraud; the teachers would be paid for work not done and students would receive subsistence allowances they were not entitled to.

The particular indictment on which appellant was tried was based on his actions as a teacher in participating with the manager, Arango, and others in causing the false records to be prepared for submission to the Veterans Administration. The indictment charged many instances of naming certain students or fictitious students in whose names falsified attendance slips were made up.

The two other indictments, whose consolidation with the one naming Gomez is the principal basis of Gomez's appeal, each charged Arango and others (but not Gomez) with conspiring with a certain named student to cause him to falsify his attendance records as a result of which the student was paid by the Government certain sums for subsistence which he was not entitled to receive.

Appellant strongly urges that it was prejudicial error for the trial court to consolidate for trial the three indictments, in two of which he was not named as a defendant. He says that the accumulation of evidence in the two cases in which he was not a defendant prejudiced his defense in the case in which he was responding because of the danger of identifying him with acts proven against the others.

The rule of procedure under which the trial court acted, and which the Government here contends supports its action, provides:

> "The court may order two or more indictments or information or both to be tried together if the offenses, and the defendants if there is more than one, cuold have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information." 18 U.S.C.A., Rule 13.

It thus becomes necessary for us to determine whether the charges against Arango and the students could have been included as counts of the indictment against Arango and the teachers.

In the nature of the indictment against appellant there were three groups involved; the school management, the teachers and the students whose instruction was the thing actually paid for by the Government. Whenever a student claimed hours of instruction that he didn't receive this could be calculated to defraud the Government in two ways; first by padding the demand for tuition,

and second by increasing the amount of subsistence. Clearly the connivances of the three groups would be helpful if not necessary for the successful operation of the scheme. The management could not safely claim excessive numbers of hours taught without cooperation of the teachers who certified to the false reports, and they could not safely make false reports of hours taught without cooperation of some of the students who were reported as the ultimate recipients of the fictitious periods of instruction.

Appellant has brought up to us the transcript of testimony of four witnesses who he says were called to testify in the cases of the student indictments. The caption shows that their testimony was in the case in which Gomez was on trial. However, assuming that they testified only in the other two trials that were consolidated with Gomez's trial, we find nothing in this testimony that would not have been admissible on the main trial. All four of the witnesses mentioned Gomez as a teacher or as being connected with the school. One of them testified that Gomez solicited the students' enrollment. All of their testimony related to the actual hours of instruction, and it was relevant to the Government's contention that the reports were padded.

We conclude that the charges against the students and management might well have been included in the indictment against the teachers and management.

Nothing in the Supreme Court's decision in *Kotteakos v. United States*, 328 U.S. 750, throws any light on our problem here. In the Kotteakos case the court held that whereas one conspiracy was charged involving many dif-

ferent acts, there were in fact eight different conspiracies. Here we say only that the charges of all three conspiracies could well have been included in a single indictment and the proof adduced as against the students could have been introduced against Gomez and his fellow conspirators on the teacher indictment if it had been tried separately. As was true in *United States v. Samuel Dunkel & Co., et al* (2 Cir.), 184 F. 2d 894, pursuant to the purpose alleged in the Gomez indictment different persons who participated in the conspiracy (here broken into three indictments) obtained and presented false claims to the Government. We think that, under the ruling of this Court in *Kivette v. United States* (5 Cir.), 230 F. 2d 749, the two indictments that were consolidated with the Gomez or "teacher" indictment could well have been made the basis of separate counts in the latter, and thus rule 13 is satisfied.

The only other basis for appeal asserted by appellant is that one of the jurors who heard the case was not a qualified juror under the Florida statutes. This is asserted to be so because the juror had lost his qualification as an elector and was not reinstated as an elector until after the trial started. Appellant cites no federal or Florida authority applicable to this situation. We think the contention is completely answered in *Ford v. United States* (5 Cir), 201 F. 2d 300, where we said:

> ". . . . Where the objection to a juror relates, not to actual prejudice or other fundamental incompetence, but to a statutory disqualification only, such disqualification is ordinarily waived by failure to assert it until after verdict, even though the facts which constitute the disqualification were not previously known to the defendants.

The objection based upon the previous felony convictions comes too late after verdict, no actual bias or prejudice being shown. Spivey v. U.S., 5 Cir., 109 F. 2d 181 text 186; Strang v. U.S. 5 Cir., 53 F. 2d 820; Roush v. U.S., 5 Cir., 47 F. 2d 444; Bush v. U.S., 5 Cir., 16 F. 2d 709; Kohl v. Lehlback, 160 U.S. 293, text 302, 16 S. Ct. 304, 40 L.Ed. 432, tex 435; Raub v. Carpenter, 187 U.S. 159, 23 S.Ct. 72, 47 L.Ed. 119; Frazier v. U.S., 335 U.S. 497, tex 513, 69 S.Ct. 201, 93 L.Ed. 187, text 199; Morton v. Welch, 4 Cir., 162 F. 2d 840; Queenan v. Territory of Oklahoma, 190 U.S. 548, 23 S.Ct. 762, 47 L.Ed. 1175."

Concluding as we do that the trial court did not abuse his discretion in consolidating the three cases for trial and that there is no merit in the second ground of error relied upon, the judgment must be AFFIRMED.

A true copy

Text: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana

(SEAL)

The undersigned hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay; this petition is restricted to the ground above specified which was available to the petitioner when he filed the petition for writ of certiorari herein but which ground was not presented at that time, he believing that the ground which was presented was sufficiently substantial to obtain the relief sought.

LOUIS A. SABATINO

I HEREBY CERTIFY that a true copy of the foregoing petition was airmailed to the Solicitor General, Department of Justice, Washington 25, D. C., on the _____ day of November, 1957.

LOUIS A. SABATINO

I HEREBY CERTIFY that a true copy of the foregoing petition was mailed to the office of the United States Attorney, Federal Building, Miami, Florida, on the _____ day of November, 1957.

LOUIS A. SABATINO